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THE

GREAT LIBEL CASE.

GEO. OPDYKE *agt.* THURLOW WEED.

A FULL REPORT OF THE

SPEECHES OF COUNSEL, TESTIMONY, ETC., ETC.

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THE GREAT LIBEL SUIT.

GEORGE OPDYKE agst. THURLOW WEED.

Before Judge Mason and a Jury.

FIRST DAY.

TUESDAY, DECEMBER 13TH, 1864.

This case came on for trial to-day. The Court room was quite full. David Dudley Field and ex-Judge Emott appeared as counsel for the plaintiff, and Wm. M. Evarts and Edwards Pierrepont for defendant.

EMPANNELING THE JURY.

Mr. Opdyke was early in attendance, and arrived in company with his counsel, David Dudley Field, ex-Judge Emott, and William F. Opdyke. The defendant, Mr. Weed, did not arrive until the calendar was called. He took a seat beside his counsel, William M. Evarts, ex-Judge Pierrepont, and R. M. Blatchford, and looked remarkably well. The calendar having been disposed of, the Court inquired if the counsel were ready to proceed.

Mr. Evarts—I suppose we shall be ready to proceed with the trial. I have a long list of witnesses, and cannot tell who are present unless the clerk calls off the names. For such of the witnesses as are absent I shall move for attachment.

Judge Mason—Well, enter them all in one order.

The first juror called was Charles B. Cornell.

Mr. Evarts—This is a suit for libel, Mr. Cornell; do you know anything about the case? A. No, sir.

Q. Formed no opinion? A. No, sir; I know nothing about it, except what I saw in the newspapers.

Q. Do you know either of the parties? A. I may have seen Mr. Opdyke, but beyond that I have no acquaintance with either of them.

Mr. Evarts—We have no objection to the juror.

Berman Cushing stated that he had heard of the case before; saw something about it in the newspapers; had formed no opinion in regard to the matter; considered himself an impartial juror, and fully competent to render a true verdict according to the evidence. (Objection to the juror withdrawn.)

Thomas Warren had not formed any opinion in regard to the case, and could give an impartial verdict. (Objection withdrawn.)

Benjamin Way knew nothing about the case, except what he saw in the newspapers, and had formed no opinion, knew neither of the parties. (Objection withdrawn.)

Thomas J. Wayne, Jr., had heard of the case politically; had formed no more opinion on this subject than he had on any political matter.

Q. What is the opinion you have formed? A. I don't know that I am called upon to state.

JUDGE MASON—You certainly are.

JUROR—Well, I think my mind is biased.

JUDGE MASON—The juror can stand aside.

AUGUSTUS F. MULLER knew neither of the parties; had not formed or expressed any opinion in regard to the matter. (Objection withdrawn.)

JOHN T. SEAMAN and HANS J. HANSEN knew nothing about the case and were without any opinion on the subject. (Objection in each case withdrawn.)

WILLIAM HOLDEN had read something about the case, but had not formed any opinion; had read something in the *Sun*, but did not remember what it was exactly. (Objection withdrawn.)

GEORGE E. HARRISON had heard of the case before, and would rather be excused from sitting on the jury: he had read all the correspondence and considered himself rather biased on the matter. (Excused.)

HENRY HARRIS and BERNARD KILDUFF were then examined, but never having expressed an opinion they were accepted as jurors.

SAMUEL C. DANA thought he was somewhat biased on the subject, and was excused by the court.

JOHN DRINKER and H. K. BALL were both without prejudice, never having formed nor expressed an opinion.

(Objection withdrawn in each case.)

MR. EVARTS—We shall now exercise the right of peremptory challenge. Mr. Clark, will you be good enough to draw other names instead of Messrs. Kilduff and Seaman?

MARCUS KLINGER was drawn in place of Mr. Kilduff, and upon being questioned proved satisfactory to both parties.

PHILIP VAN VALKENBURG was then called to supply the place of Mr. Seaman.

MR. FIELD—Do you know either of the parties in this suit? A. I know them by sight.

Q. Have you any particular bias in this case? A. No, sir.

Q. Have you had any business with either of the parties? A. I have not.

Q. Do you know Rantz Van Valkenburg? A. I do not.

MR. EVARTS—What is your business? A. Drygoods jobber.

Q. Are you not acquainted with Mr. Opdyke? A. No, sir; except by sight.

Q. Do you know nothing about this suit? A. I have heard it talked about.

Q. You have probably talked about it, too? A. I have to one or two in the store.

Q. Have you not formed some opinion? A. No.

Q. You were interested enough in the case to talk about it in the store? A. Yes.

MR. EVARTS—There seems to be a difference of opinion among us, your Honor, as to how many peremptory challenges we are entitled to.

JUDGE MASON—The statute only gives you the privilege of peremptorily challenging two jurors.

MR. FIELD—That is my view of the rule.

MR. EVARTS—My associate, ex-Judge Pierrepont, thinks we are entitled to three; but I think myself we are only entitled to two. However, we would like to have your Honor's ruling upon the point.

JUDGE MASON—I am inclined to think that the law was changed, making it three; but I don't mean to jeopardize the trial for a surmise. The statute before me declares the number to be two, and that must be the ruling of the Court.

MR. EVARTS—It is agreed, then, that there are to be but two peremptory challenges, and that no exception will be taken by either party to your Honor's ruling. The juror, Mr. Van Valkenburg, may stand aside, and the Clerk will be kind enough to call another juror in his place.

Edward M. Seaman was then examined and accepted instead of Mr. Van Valkenburg.

MR. EVARTS—We will excuse Mr. Muller also, and the Clerk will call another juror instead.

Caspar J. Westervelt, proving satisfactory to both parties, was accepted as the twelfth juryman, making the number complete.

The jury thus empanneled answered to their names, as follows: Charles B. Cornell, Berman Cushing, Thomas Warren, Benjamin Way, Hans J. Hansen, William Holden, Edward M. Seaman, Henry Harris, John Drinker, H. K. Ball, Marcus Klinger, Caspar J. Westervelt.

A NICE QUESTION.

Ex-Judge Pierrepont—If your Honor please, a question has arisen as to the right to begin, and we now move that the Court direct the defendant to commence the case. You will perceive that the complaint states that these libels were published in the Albany *Evening Journal* on the 18th and 24th of June, 1864. The answer admits the publication, but justifies the act by stating that the publication was true. Nothing that is alleged in the complaint is denied in the answer. Consequently, under our rules of proceeding, there is nothing for him to prove; and it is for us, upon whom the burden of proof rests, to open the case to the Court and jury. There is no denial of a single allegation contained in the complaint. The defendant states that these allegations are true; but he also says that he did not make them until after he had given the matter his careful consideration, and that such consideration was enough to convince any man of ordinary judgment that the allegations were true. Now the Code, if your Honor pleases, makes provision for a case of this kind, and I refer you to page 165 to strengthen my position. The defendant having admitted everything that is charged in the complaint, there is nothing for the plaintiff now to prove, and the burden of the case falls upon us. We are here ready to meet the burden by way of justification, and it is for us, therefore, to begin the case. If we don't satisfactorily prove the truth of these allegations we are liable. No special malice is claimed nor specific damages called for in the pleadings, and we ask your Honor to direct that the party having the affirmative shall prove the case. The question has repeatedly come up in England in libel suits, and this has been the practice. If there is anything to be proved by the plaintiff before the case goes to the jury, of course he has the privilege of introducing testimony; but I hold that in the present condition of the pleadings, the burden of the proof is upon us, and we are entitled to open the case.

Ex-Judge Emott—Does the gentleman on the other side mean to say that if this case was given to the jury without any evidence, merely upon the pleadings, they would be bound to give a verdict for the plaintiff for any amount of damages he might claim? Does he mean to say that we are not at liberty to prove malice? We have a right to show express and positive malice on the part of the defendant. In regard to the amount of damages, is it not important for us to prove the extent of the circulation of the *Evening Journal?* How else are the damages to be enhanced or lessened except by showing the circulation of this newspaper? As we have to go to the jury on the question of damages, it is important for us to show how extensively these libels were promulgated. I am surprised that the point was raised by the gentleman, because the practice is well settled, both here and in England. Lord Denman, sitting with Lord Lyndhurst and Baron Bailey, decided in a case exactly similar to this that the plaintiff was entitled to begin the case, and overruled the decision in the case of Cooper *vs.* Whitely, where the Judge was of an opposite opinion. In the case of Huntington *vs.* Conkey, reported in Barbour, there was a similar decision, which was affirmed by the Monroe general term. But the most important case of all was that of Fry *vs.* Bennett, where this point arose and was disposed of after the English fashion. The case came up before Judge Oakley, who ruled that the right to begin was with the plaintiff, and Chief-Justice Bosworth affirmed the judgment. The question then came up before the Court of Appeals at Albany, where it was fully argued, and the result was that the Court affirmed the ruling of the lower Court. In the case of Littlejohn *vs.* Greeley there was a similar decision; so that it may fairly be considered the practice in all our courts.

Judge Mason—I am very much inclined to think the rule is as is stated by the counsel for the plaintiff. In cases of this description especially the plaintiff should have the right of introducing testimony as to the question of damages. In no other way can the damages be enhanced or mitigated except by proof.

MR. EVARTS—Your Honor does not wish to deprive us of the right to offer authorities. I think I shall be able to satisfy this Court that the cases of Fry *vs.* Bennett, and Littlejohn *vs.* Greeley, are wholly distinguishable from this case. Now, the circulation of a newspaper, however great or small, does not affect the question of malice one iota, and it would be a matter of error for the plaintiff to be permitted to prove anything not set forth in the proceedings. Baron Alderson lays down the rule in this way: "What would be the consequence if no evidence was to be given at all? He who would not wish the result to be against him, must begin." Judge Darling Smith, of this State, decided similarly. The plaintiff in this case claims damages generally, and I submit to your Honor that it would be unfair for him to come in here and produce testimony as to any specific damages when he does not make the averment in his complaint.

JUDGE MASON—I am strongly of the opinion that the plaintiff has the right to begin this case. It is true he has not stated the extent of the damages in the pleadings, but that does not prevent him from putting in evidence the circulation of the *Evening Journal*, with the view of getting at the question of damages. I am also inclined to think, in reference to the question of malice, that it is not necessary to make a special averment in the pleadings. There may be some doubt about the rule; but I so hold, and I think the law is to that effect.

THE CASE FOR THE PLAINTIFF.

EX-JUDGE EMOTT opened the case for the plaintiff and spoke substantially as follows: If the Court please, and gentlemen of the jury, the appearance of this court room testifies that there is something of great public interest in this case. The jury, however, has been selected with great care on both sides, and are supposed to be unbiased. It is not to be supposed that these parties are unknown to you, nor that any of you enjoy their acquaintance, but they are men of such repute that you cannot fail to know something about them. Now I wish to remove any impression that you may derive from any source whatever that this is a political libel suit. It is true that you have before you two men who occupy a prominent position in the same political party; but gentlemen, this is not a suit with reference to political questions. Nor is any action brought here which can affect the political proceedings of either of the parties. It is a case where the defendant has ventured to promulgate in the most deliberate manner charges which affect the personal character and integrity of the plaintiff in this suit. It is no political strife between the two parties, but a question affecting the private character of the plaintiff. George Opdyke must be known by reputation at least to every one of you. Once the chief magistrate of the greatest city on this continent, and long before that associated with the leading merchants of New York, who would spurn his acquaintance if there was anything affecting his character for honesty or morality. If I was addressing you, two years ago, upon the question of his character, I would have nothing more to say. He is now before you—a man charged with swindling—with being a speculator upon his country in the hour of its greatest peril—as a man who was ready to sell his soul for gain—as a man accused of perjury in the public prints of this city, as he walks before his fellow-citizens. The whole of this is the work of the defendant, and his counsel stands here to-day to justify it. They have invited the justification, and we are prepared to meet it. Thurlow Weed must be known to you as well as George Opdyke. He is a member of the same political party as the plaintiff, and was formerly publisher of the *Evening Journal*. He is an able writer, and charges of this description come with double from his pen. His ability as a journalist is unquestioned. He has done as much, if not more, than any man to build up a party which now rules the destiny of the country, and whose influence will be felt all over the known world. He has been for years the political leader and guide in this State, with an influence spreading all over the Union. He is allowed to control the columns of a newspaper even after he has severed his connection with it, to attack the character of the plaintiff. But the case does not stop here. Standing where he did, he affixed his initials to the libelous articles, and sent them broadcast to the world, not as the missives of some unknown and obscure editor, but as the productions of his individual pen. It

is no obscure libeler that we have to deal with. And now for these charges which are made against my client. If you are unfamiliar with the publications which have brought us here to-day, you will be astonished with the magnitude of the crime, and be at a loss to impute a motive for such gross and reckless conduct. I have collected from the files of the journal the gist of these charges, and without reading the whole of the articles I will briefly state what they contain. I will begin with this sentence: "George Opdyke has made more money upon army contracts than any fifty Jew sharpers in New York." The next charge is more specific as regards malice; but it is necessary for me to explain matters a little. Previous to the July riots, Mr. Opdyke was interested in the manufactory of guns and carbines for the government. The mob made this factory the object of their special vengeance, and utterly destroyed it, together with all its contents. Not even the books and papers were saved, so quick and complete was the work of destruction. A claim was made upon the county for the loss of this property, and the Board of Supervisors allowed it. The claim was made by Mr. Farley, who was the manager and part owner of the factory. Mr. Opdyke made no concealment of his interest in the establishment, but, like any man of business, thought it would be better for the manager of the concern to make the claim, which was fairly stated, and allowed by the Board of Supervisors. The libelous article, in referring to this claim, says that George Opdyke concealed his interest from the Board of Supervisors in order that he might, as Mayor of the city and *ex officio* member of the Board, have the privilege of sitting in judgment upon his own claim. It was also stated that a portion of these guns which had been delivered to the government, and for which he received $25,000, were charged in the bill against the city, before the Board of Supervisors, and that in this way the plaintiff received double pay for his guns. The next allegation is that at the time John C. Fremont was a candidate for the Presidency, his financial position was such that he had to dispose of a portion of his Mariposa estate to raise some money, and that on that occasion two million five hundred thousand dollars of the stock was wrung from him by the plaintiff, who took advantage of the candidate's necessities. The next charge is that the plaintiff was engaged in selling shoddy clothing and blankets to the government. That these shoddy articles were rejected by the government agents in this city, but "were worked in in Philadelphia." I suppose there can be no doubt about the meaning of the words "worked in." They certainly mean something disgraceful. But the most malicious charge of all was the allegation that George Opdyke sold the office of Surveyor of the port of New York for the sum of $10,000. We have claimed, for this false and malicious attack, the sum of $50,000. They will not say that this sum is beyond the ability of the defendant to pay. I think they will hardly say that this is more than we have a right to demand, especially as these charges have been directly renewed, and are even now on record in the courts of justice. I say that, if they fail to prove these charges, the sum of $50,000 will not be near enough to cover the results of the injury inflicted. It is not money for which this cause is brought; but we demand your verdict—the largest and most decisive, as well as the expression of your opinion—the opinion of a jury drawn from among the intelligent men of this county. It is to know the outrageous character of the libel, and the unfounded charges on which it is based; and to give you an opportunity so that you may show that sense of its untruth when that shall have been proved; your sense of its character, as it stands in the columns of the paper where it was first published. A good deal has been said about motives in the case. It is hard to say what may have been the motives for this publication. It may have resulted from disappointed schemes of ambition. It may have been the result of envy or of wounded vanity. In any way, the motive was malicious. And if these things be so, if we do not receive at your hands a verdict that shall ring through the land as loud and as wide as these charges have gone, justice will not be done. No trifling amount can mark your reprobation of such a libel, nor of your sense of justice in this case. There is no mistake in this issue. Either George Opdyke is a heartless, brutal, corrupt and perjured scoundrel, or else the author of this publication is a libeler, attacking a man's dearest opinions in language the most inflammatory that can be invented. If this be so, there can be no verdict given by you too large to punish him. What is more

important to the community, to you, and to Mr. Opdyke, is that you should consider this question in regard to its results. You must show that the influence in the hands of the publishers of newspapers is not altogether unlimited. But I must say that there is no power in this country equal to that of the proprietors and conductors of the public press. They have the means of doing wrong, and inflicting evil greater than that allotted to any other power in the world. Frequently we hear that counsel in a public court does this and does that. But the voice of counsel dies within the room where his words are heard. The conductor of a public newspaper puts his ideas into print, and sends them broadcast throughout the country. When these words come into general circulation, there are no means by which their influence can be stopped. The only control that can be exercised over them, is to be found in the wise and proper principle in which public justice is administered through the law. The learned counsel then proceeded to read the words charged as libels from the *Evening Journal* of the 18th of June, conveying direct reflections on Mr. Opdyke, late Mayor of the city of New York.

"This man has made more money by secret partnerships in army cloth, blankets, clothing, and gun contracts, than any fifty sharpers, Jew or Gentile, in the city of New York. * * *

"G. W. Farlee, Opdyke's son-in-law, made a claim upon the Supervisors for damages sustained by the destruction of guns in the process of manufacture under a contract with the Government. Mayor Opdyke was, by virtue of his office, a member of the committee before which this claim was allowed. Opdyke disclaimed any personal interest in the gun claim. Farley denied in the journals that Opdyke was interested, and made an affidavit, which was submitted to the committee, swearing that *he* was the sole owner of the gun contract. Opdyke, therefore, sat in the committee, investigating the claim of his son-in-law, and at an early day received a check for $190,000. It is alleged that $25,000, received from the government on the contract, was *forgotten* in making up the claim against the city. But though the city paid handsomely and promptly, 'Oily Gammon' soon came 'to grief.' He refused to divide profits fairly, and Mr. McNeil, member of the present legislature, commenced a suit against George Opdyke for a sixth part of the $190,000. In presenting this claim to the Supervisors, Opdyke declared, and his son-in-law, Farlee, made oath that the former had no pecuniary interest in it. In answering Mr. McNeil's complaint, Opdyke denies that McNeil is thus interested, and avows himself as the owner of the share claimed by the plaintiff! And this answer to McNeil's complaint is sworn to by Opdyke! This, therefore, is Mayor Opdyke's position. To qualify himself to act *impartially* and *honestly* for the tax-payers of New York, on a committee he disclaims being interested in the gun claim, and to that disclaimer his son-in-law adds an affidavit. The claim is allowed and paid. A partner, after calling the ex-Mayor a swindler, prosecutes for a share of profits; and in his defense, Oydyke made oath that he owns the largest share of the contract, which, before the claim was paid, he had repudiated.

"* * * * More than a year ago, Mayor Opdyke and others reminded General Fremont that, when he was a candidate for President in 1856, he was weakened by pecuniary embarrassments; and that as his *friends* intended to run him again, it would be wise to put his affairs into a better shape. The General assented, giving to Messrs. Opdyke, Morris Ketchum, and D. D. Field a schedule of his debts. These *friends* formed themselves into a Mariposa Mining Company, mortgaging the mines for $1,500,000, with the proceeds from which all the General's debts were to be paid. But difficulties arose, which, however, were adjusted by the payment, by General Fremont, of $2,400,000 in Mariposa stock, to Messrs. Opdyke, Ketchum, and Hoey, and a counsel fee of $200,000 to David Dudley Field, Esq. And said the confidential and *real* friend of General Fremont, who gave me this information, 'there were other exactions and extortions during the negotiations, that would make Jews blush.'"

Counsel also put in the following from the article published in *The Albany Evening Journal* of June 25th, 1864.

"Mr. Gibbs, the carbine patentee, says, that in the 'claim' submitted to the Supervisors, on which $190,000 was paid, there is a large swindle. * * * Opdyke can, if he pleases, enlarge the field of inquiry so as to embrace the alleged sale of the office of Surveyor of the port of New York for the moderate sum of $10,000; the copartnership with 'Nothing to Wear,' Butler in the Custom-House 'labor contract'; and the 'shoddy' blankets that were rejected in New York and subsequently worked in at Philadelphia."

TESTIMONY OF PHILIP TEN EYCK.

PHILIP TEN EYCK sworn; examined by counsel for plaintiff: I was one of the publishers of the *Albany Evening Journal* in June, 1864; the defendant, Weed, was not then in any way connected with the paper; he had no interest in it, whatever; we printed the Daily, Weekly, and Semi-weekly *Albany Evening Journal;* they all contained pretty much the same reading matter.

Q. What was the extent of their circulation—the paper containing this libel? (Objected to; objection over-ruled; exception taken.) A. The aggregate circulation of the three editions was from 23,000 to 25,000, mainly in the State of New

York, west of the City of New York ; it had a limited circulation in this City ; it exchanged with pretty much all the prominent newspapers in the State, and to some extent outside of the State ; the Weekly edition was about 17,000 ; the Semi-weekly not more than 2,500 ; it was sent to the Governor and some of the officers in the State House.

Cross-examined—The paper was not circulated by public authority among public officers ; it was sent as a matter of favor to them, and also to the crier of the Circuit Court.

Re-direct—It was sent to subscribers in the State Legislature ; there was a dispute about its being a State paper ; Judge Hogeboom gave it as his opinion, prior to June last, that it was not.

TESTIMONY OF ALEXANDER WILDER.

ALEXANDER WILDER sworn ; examined by counsel for plaintiff ; I live in New York city ; I belong to the staff of *The Evening Post ;* my duties lead me to Albany every winter ; I am acquainted with *The Albany Evening Journal ;* it circulates in places where I have seen it—generally among members of the Whig party and Republican party ; occasionally among leading members of the Democratic party ; I have known the paper ever since I was a boy.

Q. What has been its character and position ? (Objected to.) A. It was a political paper, first anti-Mason, then Whig, then Republican ; as such, it was taken by persons having sympathies with it ; it having been once or twice the State paper, it got a circulation in different counties of the State on that account, it stood among the first-class papers in the State ; I knew nothing of its circulation out of the State ; never saw it except in some literary associations ; I have found it taken in most of the departments at the State Hall, and taken, I should judge, by the average of our county officers ; wherever I have been I have found it.

Cross-examined—It is difficult to say exactly what I mean by being on the staff of *The Evening Post ;* I am correspondent generally at Albany during the sitting of the Legislature ; I have been one of its reporters here—police, and about the city ; I do not now hold that capacity ; I now assist in the office.

Q. Have you any knowledge of it, except as seeing it in *The Evening Post ?* A. If I understand your question, I should say I have not.

Q. Do you hold the office of Health Warden ? A. I do not ; I was Assistant Health Warden last year ; I think the nomination came from the City Inspector, with the approbation of the Mayor, confirmed by the Board of Aldermen, also by the Mayor, I suppose ; while I held the office I was on *The Evening Post.*

Re-direct—Q. Have you any particular knowledge by what Mayor you were confirmed ? A. I have not.

TESTIMONY OF MANTON MARBLE.

MANTON MARBLE sworn ; examined by counsel for plaintiff ; I am editor of *The World*, and was such in June, 1864, a daily paper in this city.

Q. Have you taken notice of the articles, portions of which have been read this morning ? (Objected to.)

Counsel for plaintiff proposed to show that these articles were republished in *The World* at the request of the defendant, with a view of showing malice.

THE COURT.—You did not allege in your complaint that it was published in any other journal.

Counsel for plaintiff claimed that a reiteration of the same slander or libel was admissible.

The Court excluded the testimony, to which ruling Counsel for plaintiff excepted, and then rested the case, whereupon the Court adjourned till to-morrow at 10 o'clock.

SECOND DAY.

WEDNESDAY, DECEMBER 14TH, 1864.

The Court-room was again crowded to overflowing, a large portion of the spectators being lawyers and politicians.

EDWARDS PIERREPONT OPENED THE CASE ON BEHALF OF THE DEFENDANT.

May it please the Court, gentlemen of the Jury, I begin to feel like Hamlet, that there is a special Providence in the fall of a sparrow, and that we are each but little atoms floating down the great river of time, borne by the resistless current without the slightest choice on our part as to the isle or the bank upon which we may be thrown; that "there is a destiny that shall shape our ends, rough hew them as we will." I have never struggled to avoid the trial of a cause. I have striven with all the powers of skill with which I am possessed to avoid this trial; I had hoped it never would be brought on; I had sought through the friends of the opposing counsel, or the opposing party rather, aided by my associate (Mr. Evarts), to avoid the public scandal, the disgraceful exhibition of public men which this trial must needs present before this community. Our client, Mr. Weed, said it was a public duty; he did not shrink from it; we did; until I began to feel that I was a coward in my own esteem, from my reluctance to come here before you and this community, and to do my part toward exhibiting the most stupendous frauds and the most outrageous corruptions that have ever been exhibited before any civilized community. In the progress of every nation, the time always comes when the corruptions among men in high places becomes so glaring and so outrageous that they cannot escape exposure. Such was the history of England after the great South Sea Bubble exploded. And I undertake to say to you here, to-day, that never did Lord Mansfield sit upon a trial in which were involved such great and high consequences as are to follow the trial of this cause. From this time, it will receive a public notoriety and importance which has never been equaled in the history of this nation. The counsel who opened this case did not overstate its importance, nor can he overstate it. It was as impossible to prevent this trial as to prevent the rebellion or the fall of Fort Sumter. We had reached a state of corruption in the public administration of affairs in this city to that degree that it could be borne no longer, and something must open the issue and exhibit it before the world. The something always does happen. It arises out of the passion, and hatreds, and selfishness of the very actors themselves, as in this case. In 1848 there was a great revolution in France. The king was driven from his throne and not one of his children ever yet returned. Just before that outbreak De Tocqueville rose in the Chamber of Deputies and gave solemn warning of the inevitable tendency of the existing corruption of public and private morals. He stated it as his conviction that it would result in a revolution in a very short time. For this he was hissed by every member present. And yet in thirty days the king was driven from his throne, and France expiated her crimes in the blood of 10,000 of her sons. We shall exhibit to you on this trial a state of corruption which, I venture to predict, will be the beginning of a revolution here. God grant that it may be bloodless; I believe that it will be. You will see an exhibition of corruption in public morals beginning here to-day, which will end in a change—which is the beginning of an end, and which our people will say they are not willing longer to tolerate. Gentlemen, when the eminent counsel who opened this case was addressing you, I looked into his clear, honest, truthful countenance, and I saw the tremor of the confusion, and the struggle between his conscience and his client. He never should have been brought into this trial by this plaintiff. There was no soul in his voice; there was no magnetism in his eye; none of that sympathy in his face, which in a righteous cause would have won over every beating heart in that seat. But he tried to lash himself into a belief that there was some justice in his cause; therefore he overstated and exaggerated to the extremest degree the statements which he said had been made by Mr. Weed. I took down his words. He said this libel substantially charged Mr. Opdyke

with being a perjured wretch who would sell his soul for gain, while others burned with a patriotism ; a heartless plunderer of his country ; a thief, a swindler, who had put $25,000 falsely into his account to the city ; a perjured official, a traitor to his country ; false to his friends ; a trader in public office. Those are his identical words. Now let us see if there is anything to warrant them. I will read the libels from the original paper. (Counsel here read the portions that were published in the report yesterday, with a few additional paragraphs.) Mr. Weed in his answer sets up that he believed these things are true, and that he was provoked to make this exhibition in consequence of the attack made upon him about the Cataline, a slander which Mr. Opdyke made because his political enemy would not help him to a place out of which he could make money. Now if we do not convince you that these statements in the article complained of are not only substantially but perfectly true, then our witnesses will fall far short of their written testimony which we have taken in this cause. You recollect yesterday we moved the Court for the right to open and close, the burden being upon us ; and the other side opposed it, claiming that they had the right to show express malice, and giving the Court to understand that they intended to prove it. The Court decided that they should have the opportunity. Have they shown a particle of express malice ? You will see that this case is one of malice, and that the plaintiff is moved in this matter by two passions, viz : malice and avarice. We have learned in the progress of this trial that Mr. Opdyke persisted in bringing it on in spite of every good friend, who told him he was an idiot in so doing. We finally got at the reason of his persistency. He thinks he can get money out of the defendant, and is willing to risk his reputation for the sake of money. So said one who was his partner, and who will be put on the stand. " You will find," said that partner, " that the passion of avarice has so taken possession of him that he has even let his own house in the Fifth avenue, where he told me he was worth $2,000,000, and had gone to a boarding house to save money." The answer avers not only that these charges were provoked by the false accusation in regard to the Cataline, with which it was proved, over and over again, that Mr. Weed had no connection, but by other charges brought by Mr. Opdyke to the injury of the defendant. The acquaintance of these two men commenced in this way. Mr. Opdyke, having made a great deal of money, wanted some political honor, so he got elected to the Legislature. Mr. Opdyke arose from an humble beginning, in New Jersey. Mr. Weed also arose from an humble beginning. Both struggled up from the lower ranks of life. But there is this difference between them : Mr. Weed still retains his feelings of affection and kindness toward the class from which he sprung, while Mr. Opdyke kicks away with scorn the ladder by which he ascended. At first he was a Democrat, but afterward became a Republican. He sought the acquaintance of Mr. Weed. He mingled his desire of money-making with what he did He sought to accumulate it by the sweat of other men's brows, and by the use of his capital, so he introduced a bill to repeal the usury law. Mr. Weed saw Mr. Opdyke, and told him it was not right. Mr. Opdyke made a speech in favor of it, and urged it through the newspapers, arguing that it would be better for the poor people, because the result would be that the rate of interest would fall below seven per cent. " If that is so," said a shrewd silversmith up town, " then why don't it fall below seven per cent. when there is no law to prevent you taking less ?" Is there any political philosophy that can answer that ? Everybody knows that it is only the money-lender who wants the thing done, unless it be somebody who has been humbugged and deceived. Opdyke quarreled with Weed in regard to the matter. Weed came out and denounced the proposed change. Then there appeared a violent article in *The Herald*, written, as was found, by Opdyke. Weed was at the Astor House ; Opdyke came and excused himself for having published the article, and wanted their enmity to drop. They seemed to bury the difficulty. Then they talked confidentially about the management of political affairs, and how to raise money for the political canvass. Next morning that private conversation, with exaggerations and falsifications, every word of it, appeared in *The Herald*. Again Opdyke excused himself to Weed. But Weed said : " I have no more to do with that traitor," and he never spoke to him since. When the rebellion broke out, our Government apprehending foreign recognition of the rebels, sent Archbishop Hughes

and Thurlow Weed as agents to visit the crowned heads and great men in Europe, and set the minds of the people right concerning our affairs. The influence of those men did stop that recognition of the Confederacy. On his return, the Common Council voted Mr. Weed the freedom of the city and a public dinner. Mayor Opdyke vetoed the resolution, admitting at the close of his veto that there were other reasons than those he had expressed which he would not give. The indignant Common Council passed the resolution over his veto, and Weed received the freedom of the city. Now, the opening counsel said there was no provocation for these charges. Just twenty-four hours before this came on, there appeared in all the newspapers the most violent and bitter attack upon Weed that you ever saw, by Mr. Andrews, pretended in consequence of a grievance which happened last summer. When I saw Opdyke, day before yesterday, walking with Andrews, I understood why the letter came out at this time. In that letter, he says Weed dropped some disparaging remarks about Mrs Lincoln, and he ran that very night and told her, and that, subsequently, Weed, when in Washington, got forgiven. But the tale-bearer never got forgiven, for Mrs. Lincoln saw that he was ejected forthwith from his office and he never had one since. She treated him right. Now, if Opdyke brings this suit for the purpose of vindicating his character, and not to get money, why didn't he commence a criminal prosecution? But the counsel must have $50,000 dollars to punish the defendant. Nothing but avarice moves this action. Ambition and lust grow weak with age, while avarice increases even to the moment when a man droops into the grave. The charge against the plaintiff is, that he resorted to contrivances by which to put money in his pocket in a way that is not lawful, honorable and just. Under the present law of libel we are allowed to justify by proving the truth of the charges. We should do so. They dare not refuse to put the plaintiff on the stand. He will have to tell his own story to you. One charge is, that he did recover out of this city, in an illegal manner, some $60,000, while as its public guardian he held a flaming sword against any one who should attempt to rob it. Another charge is, that it was alleged that he received for the office of surveyor $10,000. We shall prove that it was alleged, and that there was ground for its allegation. Another charge is, that he got a large amount of money in an extortionate way out of Gen. Fremont in the Mariposa mining operation. We shall put witnesses on the stand to prove that. Another is, that he made extortionate contracts out of the Government, connected with army clothes. We shall put witnesses on the stand to prove that. These are all the charges that are made. Now for the proof. In the libel it is said that he can enlarge the field of inquiry so as to embrace the alleged sale of the office of Surveyor of the Port of New York for $10,000. We say it is alleged; we shall prove it in this way: A man named McNeil, now a member of the Legislature, who was a partner of the plaintiff, a man whom you will note and whose every word you will believe, was an active politician in this city in 1859, when the plaintiff wanted to run for mayor. Opdyke applied to McNeil for assistance—the same man who subsequently became his partner and also sued him to recover part of his ill-gotten gain—the same man to whom the plaintiff paid, four days ago, $11,000 to stop the suit. Opdyke, following the example of other mayors, got his picture exhibited in all the shop windows. He was beaten by Wood. Two years afterward Opdyke went to McNeil again for help to be elected Mayor. McNeil asked him to give him a little advice. Opdyke assented. Said McNeil, "That's a good picture of yours, but somehow it don't take; the instincts of the people are not educated up to that style of face. Now put the picture out of sight and use money." When Opdyke heard that word, "he was sorrowful, for he had great riches," so he thought, "How shall I get along without paying the money myself?" McNeil said, "If there is a right kind of Surveyor in the Custom House who will assess the clerks some $10,000, that can be handed over to you, so that the election will not cost you anything." Opdyke took. Henry B. Stanton was Opdyke's candidate. Says McNeil, "Suppose Andrews is put on the track as a third man." That is the thing," says Opdyke. So McNeil and A. J. Williamson went to see Andrews. They met him at an oyster house and had a drink. Andrews asked McNeil to get Opdyke's influence at Washington. "What will you give?" says McNeil. "I have got nothing," says Andrews, "but I will assess the clerks

for $10,000 for Opdyke's election." McNeil went back to Opdyke and said, "Andrews says if you will withdraw your influence for Stanton and let him have that office, he will give you the money for the election." That relieved Opdyke. "But won't he cheat you?" said Opdyke. "No," says McNeil, "he looks like a man that won't cheat." "Then, go," says Opdyke, "and take Williamson with you, and get the promise to you two together and I will agree to it. So they went and made the bargain at the same oyster house the next night. Opdyke did not press Stanton, so that Andrews slipped in, and Stanton did not know that Opdyke was playing traitor to him. Opdyke was elected mayor, and the poor clerks paid in different assessments, some $9,000 and odd. Now came in Barney as collector, who said that money ought to go to the Committee instead of to Opdyke. Some friend said, "Are you afraid to trust Opdyke with it?" Stroking his face, Barney said, "The proper way is to let the Committee take the money;" so the money went to the Committees, headed by Churchill and Keyser; but, after all, a part of the money did get into Opdyke's hands, on the ground that he had advanced his own money for his own election; Andrews had promised McNeil three or four places for his friends in the Custom-house; McNeil asked for the places after Andrews' appointment, but never got them; he grew suspicious, and finally asked Opdyke, "Has Andrews ever paid you that $10,000?" "No," says Opdyke, "I have only got $7,000 of it;" a few days after that, Opdyke, McNeil, and Andrews met at Willard's Hotel, in Washington; McNeil, indignant at the way he and Opdyke had been treated, went up to Andrews and said, "You are a cheat; there is no honor or truth in you; you promised me three or four places, and you have cheated me and Opdyke also;" Andrews said, "I did pay Opdyke the $10,000;" just then Opdyke said, "Charley, be still; come with me and let's take dinner;" McNeil threw him off; "I was boarding there myself," said he, "and I knew that he would not give me a drop of wine, and I would not go;" still McNeil remained Opdyke's friend; Opdyke said, "You and I can make some money. There is a Government contract for making ten thousand carbines by Brooks, and we can go into it;" so they made an agreement with one Marston, who had an establishment, corner of Second avenue and Twenty-first street, to make the guns. The order from the Department was in 1861, and it was assigned to Opdyke and McNeil in 1862. They hired Marston, who, not having any money, it became necessary for Opdyke to advance a large amount. It ran on until he had advanced $65,000, for which they took a chattel mortgage on the machinery. Loren Jones, the superintendent, again looking over the accounts in December, 1862, found that Opdyke had lost some $30,000. Opdyke became exceedingly blue, and said he would sell out at a loss of $25,000, but nobody bought him out; so he thought he would buy Marston out, and they had the goods appraised and transferred to Opdyke's son-in-law, Farley. McNeil had advanced several thousand dollars, and Jones was likewise interested in it. Then they kept close watch of the accounts. They got a foreman in who cheated them out of a large sum. Just one week before the fire occurred they looked and found that Opdyke could not get off well without a loss of $25,000. On the morning of the 13th of July, Jones had thirty-four policemen come to that armory, who were prepared with loaded arms and ammunition to keep away a regiment of men. A rioter during the morning dashed in the panel of the door with a sledge-hammer. The policemen fired, killed the head man, and wounded another; the rest ran away. Not a soul of them dared to return. Later in the day came an order to withdraw the policemen. Jones was appalled. He hastened to the Mayor's office. The Mayor was not there. He was at the St. Nicholas with Governor Seymour and General Wool. Jones saw Farlee, stated the case, and asked what it meant. Farley smiled, and said "I don't know." Jones went to the St. Nicholas, saw Opdyke, and asked him "what does this mean? The property will be destroyed." Opdyke says, "Well I don't know; I guess I'll go and take dinner." Jones went back to the factory. By-and-by women and children came about it, then men, and set it on fire. One day before the fire, in looking over the accounts, they had found that they had paid out $183,000, and there was yet due workmen $2,000. Jones was not a lawyer; Farlee was. McNeil went to Opdyke; Opdyke said "you keep still, keep out of the way, don't bother about

this thing, Jones and I will make this matter up, and this city will have to pay for it." There was to be an auction of the refuse after the fire. McNeil wanted to attend it. Opdyke says, "don't go near it; it will be all right." McNeil, who had an interest in it, went to Farley, who said the same—"it is going on right; you shall have your $2 on each carbine, the same as though the contract had been fulfilled." Well, they undertook to make up the account of the loss to the city. Jones went and saw Opdyke about making up the account. Says Opdyke: "If I get back my money that I have put in, won't that be a proper way?" "Did the Mayor look at you?" I inquired of Jones. "No," said he, "he was looking down on the paper." "What did you say?" said I. "I said, 'you know you got $27,000 out of the Government for some that were delivered, and there was a loss of $25,000 or $30,000 besides; if you get all your money back what are you going to do with us? Leave us out in the cold?'" Opdyke hesitated, looked down again and said: "How ought this to be made out?" Jones said: "You are Mayor, you are watching these things; one of the objects of putting you there was on account of your wealth. Rich men never commit frauds. You know that for the guns when finished we get $24.70; well, they are in various stages of progress; save nothing but the lock, worth $3. Now, suppose we deduct what it would cost to make the lock and then we save a profit to ourselves of $10 each gun. Won't that be a good way of making up the account? Deduct the price of manufacture, $14, and it will leave $10.70." Opdyke said: "Have you shown this to Farley?" "No." "Go and see him." All this time the Mayor kept looking on the paper. Jones presented it to Farley; it took a long while to make him understand it. He said it was exactly the thing. So they made up the account. They had sold 1,050 carbines for $27,847. The mistake Weed made was that it was $25,000. It was presented to the Board of Supervisors. They did not separate the guns in the account. They put in $97,000, the price paid for the machinery, and made out a total of $208,000, deducting therefrom $2,000, leaving the amount of the claim $206,279. The account was confused; I do not suppose a single Supervisor understood that they were taking wrongfully from the tax-payers $65,000. It was adopted October 20 and approved October 23, being sworn to by Farley, the son-in law of the Mayor, as being the sole owner. The Mayor gave a check to the order of Farley, who put it into his own bank and paid it back a few days after to Opdyke. Now the actual loss on the first thousand guns was $3.17 each. Each one is charged at $13.17. On the next thousand $4.54, which was the value of the material destroyed—charged to the city, $15.24. On the next, $6.61—charged $17.31. Next, $8—charged $19. Thus, $13,870 were charged to the city, where they should have paid $3,000; $15,240 where they should have paid $4,000; $17,315 where they should have paid $6,600; and $19,125 where they should have paid $8,420; and so on, by which artful contrivance, from this city, was taken upwards of $65,000; no Wall street financier ever surpassed that; McNeil having kept away from the auction, comes to Opdyke and wants his share; Opdyke can't attend to it just now; he had not looked to see how McNeil's account was; he would attend to it some other time; that time came, and McNeil went to Opdyke's house with Williamson; Opdyke said "there are some difficulties about this thing, and I don't see how I can pay you what you claim;" "What do you mean," said McNeil; "Didn't you tell me to keep off, and the thing would be all right; and didn't Farley tell me if I kept away, I should have two dollars on each carbine?" said Opdyke, "I have reprimanded Farley most severely; he had no right to tell you that; but I will give you $1,000, and we will settle it;" "A thousand dollars! it is $17,000, and you know it," said McNeil; "Well, I can't give you that," said Opdyke;" McNeil, putting his finger to his nose, told him he was a cheating, lying scoundrel in his own house, and left; Opdyke sent Williamson to try to stop him; McNeil commenced an action to recover the money; not long after, McNeil met Opdyke in Congress Hall before breakfast, and there publicly called him a swindler, and told him he had swindled him in this gun contract. Opdyke sat opposite him at breakfast, and the food dropped from his knife and fork when he undertook to eat. McNeil followed him into the hall, and told him again what he was. And this defendant is sued because he said McNeil did say so. Now, we shall show that instead of its being notorious that Opdyke had an interest in this factory, as the counsel alleges, he wrote, and had it printed in the

newspapers that he had no interest in it. On the 25th of September, 1863, Opdyke sent such a letter to Albany, and caused it to be printed, saying that he had no interest, direct or indirect, in any Government contract, nor any business connection with the Government, of any kind, direct or indirect. We shall show that he had an interest in multitudes of other contracts. Opdyke put in an answer to McNeil's suit, swearing that he was the principal owner of the claim; and yet, his own son-in-law swore that he was himself the entire owner. The cause was on the calendar two weeks ago last Monday. This cause being expected to be tried, Opdyke went and paid McNeil $11,000 to stop his action. Now the letter declaring that he had no interest in the contract, was addressed to Senator Harris, and in it he says: "Accept my thanks for your kind letter, prompted by Mr. Weed's attack in *The Evening Journal* on myself and one of my sons. I had read the article, but did not regard it as worthy of notice." And he goes on to say that his friends knew that the charges were false as well as malicious, for he had long since convicted their author of the most reckless disregard of truth. Gentlemen, what will you think when I tell you that this "dear friend," Senator Harris, whom Opdyke asks to accept his thanks for his kind letter, prompted by Mr. Weed's attack on him, had never written to Opdyke a word! It was a concoction. A private note was sent to Senator Harris, asking to be allowed the use of this trick. McNeil will tell you that they wanted Opdyke to fix this thing in writing, but he preferred to leave it to his honor. We shall show that Opdyke made enormous sums out of other contracts, that Samuel Churchill had a contract to make 16,000 soldiers' garments, of a certain grade of cloth, in 1861, and that he came to New York and Philadelphia to buy the goods to make them, but Opdyke, hearing of it, bought up every single piece in market in both cities, and would not sell the contractor a yard of it, compelling him to sell his contract at an advance of ten or twelve cents a garment. And we will show a similar transaction with William C. Churchill, and that Henry F. Spaulding sold Opdyke 40,000 yards of cassimere, which he dyed in the cloth a regulation blue, and passed it over, at an enormous profit, to the Government, and it faded in the sun and rain. Now for the Mariposa transaction. John C. Fremont, a name perhaps more renowned than any other to-day, a remarkably singular man, a genius, with a touch of wildness and imagination, far in advance of the times, a man who does not understand financial matters, who is simple as a child, became possessed of perhaps the richest mine in the world. Being in debt, it was proposed to mortgage the estate for $1,500,000, making Morris Ketchum trustee, and issue bonds for the same. It was done. Then Ketchum, Hoey and Field were to arrange a mining company out of the balance of the property, and put it into stock, calling it $10,000,000, of which five-eighths was to belong to Fremont himself. It was required that he should give Opdyke, Hoey and Field 25,000 shares--$2,500,000 worth for being his dear friends. Opdyke had over $800.000 as his share, as will be proved by Fremont himself. Then they required that $2,500,000 more should be placed in the hands of Ketchum, so that they could vote upon it and control the company. Fremont yielded, understanding that he was giving only a proxy, and when he called to get it back he was told it was a trust. He was owing money in California, and while this thing was carried on by telegrams, costing over one $1,000, it was given out one day that it must be closed immediately or it would all fall through. So it was hurried up. Field then says, "I must have my fees," and he got $200,000 of stock for his fees. Finally, Fremont employed a lawyer to get back the 25,000 shares; at length they agreed to give him back 20,000 if he would let them have the 5,000 at 25 cents on the dollar instead of 60, the price at which it was then selling. Out of $1,500,000 bonds $280,000 were left, which Fremont thought he had a right to, but somehow or other he could not get them. Now, when you have heard the witnesses, and find that the plaintiff has done more than was charged in the libel, you will judge whether the defendant has done wrong or not. You will find that Opdyke was the leader in those matters and proposed to hold a meeting and fix up these things for Fremont. Fremont will show you that in various ways he has been stripped of his property and has little left. The counsel closed by adverting to the use of the word "Jew" in the libel, maintaining that it was much the same as if he had said "Yankee." The counsel was aware, he said, that there were two Israelites on the jury. (The opening occupied two hours and a half.)

TESTIMONY OF JAMES WATSON.

JAMES WATSON, sworn; examined for defendant by counsel: I am County Auditor; I have brought from the Comptroller's office the papers relating to the claim of George W. Farlee; I recognize the signature of that check dated New York, Oct. 22, 1863, to order of George W. Farlee, $199,700, signed by the plaintiff and other city officers; it has been paid and returned. [The account rendered by Mr. F. is duly sworn to by him, claiming $207,062.]

Cross-examined—The papers are kept loose and surrounded by bands; every check must be drawn that way; the majority of claims were first presented to the Comptroller and by him passed to the Board of Supervisors; then they were sent to the Comptroller; a special committee was appointed to pass upon the claims; many claims passed by them were paid without suits; there have been suits where Supervisors allowed claims; I was in the office in July, 1863.

Q. Did you see *The Herald* on the morning after the night in which it was stated that Mr. Opdyke and his brother-in-law owned the armory? (Objected to; objection sustained.) Witness, however, answered that he did not; the check is first signed by the Comptroller, then by the Mayor, as usual.

TESTIMONY OF JOSEPH B. YOUNG.

JOSEPH B. YOUNG sworn; examined by counsel for defendant: I am clerk of the Board of Supervisors; I have the record of the board from the time of the riot down to the payment of this claim; Hutchins or Woodward attended as clerk for the Riot Claim Committee; I did not; there was no record kept of the proceedings of the committee, except the testimony and papers of each claim.

Cross-examined—The names of the committee were Purdy, Davis, Weissman, Ely, and Blunt; they were appointed August 7th; the resolution of the board for the payment of the claims of Farley, and over forty others, was passed on the 20th of October, and approved on the 23d; I think the Mayor and Comptroller were sometimes present with the committee; I think there was no rule of the board making these members *ex-officio*.

TESTIMONY OF LOREN JONES.

LOREN JONES, next witness sworn, was six years a resident in this city; in 1863 he was employed in the armory in the Second avenue; made purchases of iron, steel, and oil, and turned over to the government all the arms it needed, attended to the business generally, was there up to the destruction of the armory; had an interest of seventy-five cents on each gun delivered, on their sale; had besides a salary for his services here; the armory was destroyed on the 13th of July; it was part of my duty to make myself acquainted with everything relating to the business, as if it was my own; my knowledge was generally minute and definite; my only duties were to attend to supplies of coal, oil, iron, or any arms to be delivered to the government, to see them delivered, and to see in a general way that everything was going on correctly; I was there every day, Sunday included, fifteen hours out of twenty-four, for the first month of my superintendance, till Opdyke bought out Marston; my duty was to see the foreman supplied with all necessary material; it was on the 1st of December, 1862, Marston was bought out by Opdyke; an inventory was taken; Opdyke had advanced some $65,000, for which chattel mortgage was taken; on the 1st of December, when this money was advanced, no examination was made as to the working of the business.

Q. Do you remember the amount advanced to Marston? A. Yes.

Q. Was an inventory made? A. Yes

Q. How made? A. By each selecting an appraiser of the value; Mr. Opdyke selecting one, Mr. Marston another, both competent mechanics.

Q. Was the stock purchased at the prices set down on the original inventory? A. My impression is some of the things were sold less than they appear on that inventory.

Q. In what mode was the money paid by Opdyke to Marston for the machinery purchased 1st December, for $67,093? A. Mr. Opdyke advanced the money.

Q. Do you know anything of the balance which made up the total sum of $67,093 69? A. That was extra machinery purchased afterwards; Opdyke paid the $65,000 and Marston was to draw on him for the balance of $67,000.

Q. Why did not the whole appear in the claim? A. A part of it was stock, but the machinery left made $67,000; it had been used in the meantime, but the claim was made on the original valuation.

Q. Had you conversation on the matter with Opdyke? A. Yes.

Q. Had he a foreman who was turned away? A. One was relieved.

Q. What was the success of the business under the foreman? A. It was not conducted to the satisfaction of parties interested.

Q. Had the dissatisfaction anything to do with the want of profits? A. That had something to do with it.

Q. What was the pecuniary condition of the concern on 1st January, 1863, subsequent to the purchase? A. It was about that time that a rough estimate was made of the affairs by myself and Opdyke, and from our figuring (a general estimate of the money advanced) we found that the business was not progressing, and I proposed to him to have a change in the superintendence.

Q. What did Mr. Opdyke say? A. He said a change should be made.

Q. State the conversation with Opdyke? A. He said he would sell out at a loss.

Q. At a loss of what? A. $25,000.

Q. Did any person offer to take it at that? A. No.

Q. When did the foreman leave? A. The 1st of January.

Q. At the time Opdyke said he was willing to lose $25,000, how much had he then put in? A. I don't know.

Q. When did the new superintendent come? A. Early in January.

Q. How long did your services then continue? A. To the destruction of the armory.

Q. Who was the new superintendent? A. John Kane, who remained there until the armory was destroyed.

Q. What ammunition was sold to the government at that time? A. 10,050 cartridges.

Q. The day before the destruction of the armory, what amount of money had been advanced? A. $183,000; something about $2,500 was due to the hands in the establishment.

Q. State your movements and experiences of the 13th July? A. On the 13th, in the morning, I went to the armory; everything was going on as usual; I went down town for supplies; did not see Mr. Opdyke; got back about twelve o'clock; found thirty-four policemen there; they said they had come to protect the property; the men were furnished with the guns we were making; each policeman had a gun and ammunition; I furnished and Mr. Kane furnished them; they were in the lower part of the building; the hands were discharged for the day—some sixty-five; they were sent away, as the police were there to defend the building; soon after an attack was made by the mob, who commenced beating on the paneling of the door; the policemen cautioned them to retire, but the mob kept on battering the door, and then the policemen fired through the door; the leading man was killed instantly and two others were wounded, and the mob left immediately.

Q. How did they go? A. They left as if they didn't expect to come back again. (Laughter.)

Q. Did they come back? A. No.

Q. How long did you remain in the building? A. Two hours.

Q. Was everything perfectly quiet? A. Perfectly so; there were no rioters to be seen anywhere in the streets; I saw a good many women and children in the vicinity, but there were no men in sight who looked like rioters; I remained there till an order came to the police to leave the building.

Q. What did you do when the order came to the police to abandon the buildng? A. I went to Captain Cameron, of the Twenty-second street station-house, and inquired from him why such an order was sent.

Q. What did you do then? A. I left there and went to the Mayor's office in the City Hall.

Q. Tell what occurred between you and Mayor Opdyke? A. The Mayor was not in his office, but I saw Mr. Farlee there.

Q. What did he say?

Objected to.

Mr. PIERREPONT—This is the man who claimed and received the money.

Mr. FIELD—That does not make him responsible in any way.

Mr. EVARTS—As much as regards the safety of the armory as if Opdyke had said it.

The COURT—I don't think what Farlee may have said is testimony against Opdyke.

Mr. PIERREPONT—Your Honor, I desire to ask the witness what Farlee said to him when asked for Opdyke.

The COURT—There can be no objection to that.

WITNESS—When I asked for Mr. Opdyke, Farlee told me where he supposed he was.

Q. Where was that? A. St. Nicholas Hotel.

Q. Did you go there? A. I did.

Q. State what occurred there? A. I saw him there in the hall of the hotel; I told him that the policemen had been withdrawn from the armory, and that I was desirous to have them ordered back there; that if that was done I could hold the building, and that I did not want any more help than the policemen that had been there in the morning to defend the building, if they could be ordered back; he said that he had no power in the matter, and could do nothing in it.

Q. What further did he say? A. That was all he said with reference to the business.

Q. What did he say with regard to anything connected with it—what did he say he would do? A. The only other words were, that he said he had had nothing to eat during the day; that he would go out and get something, and then he went into the dining-room, and I went down stairs.

Q. Did he give you any directions to go to police headquarters to try and get the police sent back to the protection of the armory? A. No, sir; as I was going home, after that, I saw the armory in flames.

Q. When you next saw Mr Opdyke, and spoke to him about the fire, what did you say to him, and he to you? A. I asked Mr. Opdyke how he proposed to make out his claim—how he would adjust his claim against the city; he said he thought of making it out from his books, that they would show how much money he had advanced; that he did not know of any other way of doing it, as everything was destroyed in the building; but in this way he thought he could get back the money he advanced, and he did not want anything more; I reminded him that there were other parties interested who spent money and labor in the concern, and that by making out his claim that way, while he might get his money the others would not; I suggested that a different mode of making out the accounts should be determined; he wanted to know what other mode I would suggest, with my reasons first.

Q. Was anything said about anybody being left out in the cold? A. Yes; in making out the claim by the books showing the sums that had been advanced, I said it would throw others out; I suggested to him, as the police and city authorities had taken possession of the property with a view of defending it, by reason of which we had dismissed our workmen, by whose assistance we could otherwise have protected it; and then their going away and allowing the property to be sacrificed in the unwarranted manner they did, it was a case in which the city should pay the full amount of damages accruing from it.

Q. What next occurred? A. He said he thought there was justice in my suggestion, and that it was a just and equitable mode of making out the claim; I took a piece of paper and showed him that there had been five hundred guns completed, and which would have been that day delivered to the government, as they were ready, and had been accepted by the government inspector, and that he should charge in the claim government prices for the guns—$24.70—the contract price

which had been awarded to him; that he should charge $24.70 for the unfinished ones, less the actual expense to complete them; for instance, if a thousand guns required but two dollars each to complete them, to deduct that amount, and charge but $22.70.

Q. There is a charge here of $13,870, in which each gun is charged at $13.87—how was that made up? A. I had nothing to do with making out the claim.

Q What was the principle observed? A. Mr. Remington had a claim; McNeil had a claim, had advanced money, and claimed to have interest on it, and certainly I thought that I was myself entitled to something for the time I had spent, and the money I had laid out; I thought these were just claims upon, and I certainly thought he would have to pay them, and that they would come to more than what he would receive by the way he proposed to make out his claim; he then told me to see Farlee, and explain the matter more in detail to him; the business was conducted in Farlee's name, who is the son-in-law of Mr. Opdyke; he understood my plan.

Q. Do you know the amount that was charged in that bill that was sent to the Supervisors for payment, and for which Opdyke, then Mayor, drew a check? A. $110,000.

Q. Which, together with the bill for machinery, amounted to how much? A. $199,927.

Q. How much could these guns, sold at the rate of $24.70 and destroyed by the fire, be duplicated at? A. With all the necessary machinery and tools ready, they would be duplicated at $14.

Q. Then the difference between these guns at $14 a piece and $24.70 amounts to $64,000? A. Somwhere in that neighborhood.

Q. Then they could have been duplicated at $45,000? A. Yes, in an establishment all complete; after the destruction of the building and its contents I traveled to different manufacturing places for the purpose of ascertaining what the actual cost of making these guns would be, and the average cost, from the estimates of different manufacturers, was from $12 to $15; Mr. Keene made out the formal account.

Q. Have you been paid your share of it? A. No, sir.

Q. Have you had any altercation with Opdyke about it? A. I have not.

Q. State the amount of profit that Opdyke has thus made upon the guns, whether finished or unfinished? A. Some $60,000.

Q. What upon each gun? A. Some $10.70 each.

Cross-examined—Q. The profit to the concern was $10.70 a gun? A. Yes.

Q. But by the destruction of the manufactory they were prevented from getting that profit? A. Yes, sir.

Q. Was any portion of that charged against the city? A. Not a dollar.

Adjourned to ten o'clock next morning.

THIRD DAY.

THURSDAY, DECEMBER 15TH, 1864.

TESTIMONY OF LOREN JONES.

LOREN JONES, recalled by the defense, testified that up to the time of the destruction of the armory, $185,000 had been paid out by Mr. Opdyke on the establishment; the claims against it amounted to $15,000; making a total of $200,000; the assets footed up at $171,000, leaving a difference of $29,000; these figures were not exactly the same as those shown by him to the Mayor, but nearly so; had told the Mayor how the amount was made up; $46,000 was put down for the guns burnt; this was at $14 a piece; it cost a little more to make them at the factory, owing to the lack of some piece of machinery.

Cross-examination—His observations were not very extensive; the carbines were valuable arms, (one of the guns was here handed to the witness;) it was, he considered, worth $25; at the time the factory was fired, about fifty a day were made; the profit on each carbine was about $10.70; the profit per day would be over $506;

it was a source of that amount of revenue to Farlee and his associates each day; the machinery was capable of lasting for a long time without additional outlay; the profits would be $50,000 a year; machinery had largely increased in price; since the machinery of the factory was bought it had increased twenty per cent. The machinery which Farlee and others put in a claim of $97,000 for, was worth twenty per cent. more under that estimate; there was material enough to make 500 guns more of second quality, which were not charged; they would be worth from $3 to $5 less than that of the first quality; the first outlay on the guns and machinery was not such a source of profit as that which resulted from their subsequent manufacture; the first 500 guns charged at $24.70 were in the factory at the time; believed the mode of estimating the value of the carbines was just and fair; the 6,000 carbines charged cost more than was claimed; in the claim on that account there was no charge made for interest; did not know of any; the guns could have been duplicated at Remington's; the actual cost of each carbine, Mr. Remington stated, would be $15; it would take six to nine months to duplicate them; the patentee's fee was $3 50 on each gun; it had been $6; Mr. Remington said he would make them, but he did not say at what price; Mr. Opdyke employed witness in the factory; he gave witness his directions; had a claim against Opdyke and McNeil, jointly, for his services; the morning of the day the armory was fired saw Mayor Opdyke; told him the police were in the building; Mr. Opdyke said, I have no authority, I can do nothing; witness parted with Mr. Opdyke, and when he went to the factory he found it in flames; if Mr. Opdyke had sent mounted policemen to the factory, they might have been there before it was fired; asked Capt. Cameron for a police force to go to the armory, but he replied he had none to spare, and that the men in the factory had better shut it up and leave it; in his conversation with Mr. Opdyke he asked him how he intended to put forward his claims for damages; he replied he meant to estimate them by his books; witness was anxious to have the interests of others in the factory secured, and he believed the estimates made were fair; had been in conversation with Judge Pierrepont about the case; told him all he knew about; did not say there was anything unusual in Mr. Opdyke's eyes at the time; he looked at the newspaper when witness spoke to him.

Re-examination.—Was in a room with counsel and Mr. Weed; spoke of Mr. Opdyke's looking down, and of his eyes; did not know of the value of the material on hand for second-class guns; the charge of $30,000 in the claim covered the royalty on the guns, or the fee of the patentees; gave as one of the reasons to the Mayor for his estimate of the claim, that the men in the armory would get paid.

Q. When was the royalty (or patentees' fees) on the guns payable? A. When the guns were delivered.

Q. For these unfinished guns, then, you did include the royalty in the claim, amounting to $6,000? A. Yes, sir.

The amount received from the Government appears among the assets on the other side. It was not deducted from the $185,000; it was put among the assets. The cost of making these guns, for which the Government paid, was not deducted from the amounts advanced by Mr. Opdyke.

TESTIMONY OF CHARLES McNEIL.

CHARLES MCNEIL, being sworn, was examined by Judge Pierrepont, on behalf of the defendant, and testified as follows:

I was a member of the last Legislature of 1864, and have been re-elected a member of the coming one from Queens County; I live there.

Q. You had a relation with this factory of guns about which we have been speaking? A. Yes, sir; my interest, I think, commenced December, 1862.

Q. Do you know of a suit in relation to it in the name of Mrs. McNeil against Mr. Opdyke? A. Yes, sir; my interest in the factory was two dollars for each gun; I advanced $6,250, $3,750 to the patentee, and $2,500 on a chattel mortgage; Mr. Opdyke, or rather Mr. Farlee through Mr. Opdyke, was the man interested; bought out the interest of Mr. Marston in the factory, and Mr. Farlee got my wife to sign off, and had the chattel mortgage canceled; after the armory was destroyed by the rioters, I saw Mr. Opdyke and asked him about the claim on the city; he

told me not to do anything about it, and Mr. Farlee and Mr. Keene would arrange that and make it all right, and that I should leave the whole thing in their hands; there was to be an auction sale of the old material left after the fire, and I thought I might make something by going to it, but he told me he would rather have me keep away from it; he would rather I would have nothing to do with it; Mr. Farlee made this arrangement with me about my having two dollars a gun; after this interview, and after the money was obtained from the city, I saw Mr. Opdyke at his office; he had sent for me before that, and so I went; he said to me: "I understand from Mr. Farlee, that he has made a contract with you to give you two dollars a gun;" I said "yes;" he said, "I will not stand that;" Mr Farlee told me of it, and I gave him a very strong reprimand for making any such remark; I told him the bargain had been made, and the mortgage had been canceled, and everything had been going on under that arrangement in good faith; I afterward saw Mr. Opdyke at his house, where I went with Mr. Amor J. Williamson.

Q. Tell the jury what occurred there. A. Before commencing our conversation on the subject of the claim, Mr. Opdyke said that he wanted it expressly understood, that whatever was said in that room between them should not be afterward used by Mr. Williamson as evidence, and he would not go on unless it was understood; I said I cared not how it was understood; we agreed to this, and then Mr. Opdyke said he would tell his own story to Mr. Williamson, and I should not interfere with him, and then I should tell my story, and he would not interfere with me; so then he went on and told his story.

Q. What did he say? A. Oh, I could not tell it all; it was about an hour and a half, I should think, that it took him to get through with it, and I did not interrupt him; when he got through, I commenced, but I did not go far before he interfered with me; I undertook to tell my story; how that the bargain was made between Mr. Farlee and myself to allow my wife two dollars a gun; that was the bargain I told Mr. Williamson was made with Mr. Opdyke; Mr. Opdyke said "No," I never made any such bargain; I asked him if I did not go down to his office, and if he did not say to me that Mr. Farlee had told him that he had made that bargain with me, and he had given him a reprimand for doing it; he said, "Oh, no Mr. Farlee did not tell me so;" I then asked him what he reprimanded him for; he said, "I did not reprimand him, I reprimanded you;" "What have I done," said I; "Why," said he, "you got Farlee to make this bargain with you;" I took my hat and told him what I thought of him, and left the house.

Q. What did you tell him you thought of him? A. I told him he was a damned rascal and a damned liar, and I never wanted anything to say to him again, and did not want to stay in his house; I took my hat and overcoat and left the house; Mr. Williamson came out as I was leaving, and told me to come back, and said Mr. Opdyke had said he would settle it; I said I would not go back into his house; that night after I got home Mr. Williamson came to my house and said Opdyke would settle with me and pay me the money, or words to that effect.

Q. Did you meet Mr. Opdyke at Congress Hall after that, last winter? A. Yes, sir.

Q. What was said there between you?

Objected to on the ground that Mr. McNeil was not a partner of Mr. Opdyke as stated in the alleged libel. Objection sustained.

Mr. Pierrepont said it was proposed to prove that Mr. McNeil said to Mr. Opdyke, in conversation with this gun business, that he was a swindler.

Excluded until it was proved that McNeil was a partner of Opdyke.

Witness stated that the whole interest belonged to his wife, and that he only acted for her.

Mr. Pierrepont offered to put in evidence the complaint.

The Court—So far as it is necessary to use the complaint to give point to the answer, it is admissible to put in the complaint.

Mr. Emott—Read the answer.

Mr. Pierrepont—I will first read the complaint, to which it is an answer; that is the proper way to lay it before the jury, so as not to begin at the wrong end.

Mr. Emott—I object.

The Court—I do not desire to listen to the whole of the complaint.

MR. PIERREPONT—Is there any objection to our stating that part of the complaint—MRS. McNeil against Opdyke—claiming $1,700, her share of the profits and interests in the gun manufactory?

THE COURT—There is no objection to that. I allow the complaint to go in, not as an affirmative evidence, but to be used so far in connection with the answer as the answer may be evidence of the admission.

MR. EMOTT—Your Honor will note our exception.

THE COURT—Certainly.

The complaint was then read to the point where the plaintiff claimed that he was the owner of the contract.

THE COURT—I will charge the Jury that the man is not the defendant, except I find that he was a partner, and there is nothing in the evidence to go to the Jury upon that question of fact. It seems to me that if this man is a partner, or if there is any evidence of the claim that he is, I do not see that we can exclude that. I shall allow the evidence on this point to go to the Jury.

Examination Resumed—Q. State what you said to Opdyke in the Congress Hall, in Albany, in connection with this matter? A. I cannot tell all; it is quite a long story; I saw Opdyke in the morning, and I asked him if he was not ashamed to show himself where I was, or to put up at the same house, after using me, or my wife rather, as he did, in cheating us out of the money.

Q.—What did he reply to that? A. He said you have sued me, and now get the money where you can; he left me and went to breakfast; I also went to breakfast, and we sat opposite each other; after breakfast he walked out, and I walked out after him, and I boned him again; among other things I told him he was a scoundrel and a rascal, and I wouldn't trust him for cents; I further stated to him that after all I had done for him—Opdyke at once asked me what I had done; and I said, in getting Andrews to give you $10,000 towards your election; and after all that, and all put together, you turn a deaf ear, and will pay nobody a cent.

Q.—What did you mean by that, getting him $10,000?

MR. FIELD—Oh no; we don't want that. [Laughter.]

Q. [Repeated]—What do you mean by that?

Mr. FIELD again interposed amid much laughter, but the question was admitted by the court.

A. The money he got from Mr. Andrews; I now recollect that he said to me, "I didn't get that money from Andrews; I got it from another power; I didn't know what that power was, but that was his reply to me.

Q. Did he state what that power was? A. No.

Q. You directed Mr. McNeil to bring this suit? A. Yes, sir.

Q. And this suit of Mr. McNeil's against Opdyke when this conversation took place? A. Yes, sir.

Now, tell the Jury all about this Andrews affair, all that occurred between you?

WITNESS—I should like you to put the question to me.

Q. Well, subsequent to that conversation what was done with regard to the assignment claim? A. There was nothing done at that time, but subsequently there was an assignment to Bernardus Hendrickson.

Q. Do you know when this was settled? A. I think two weeks ago, last month.

Q. Do you know how much was paid Opdyke? A. In the neighborhood of $11,000.

BY THE COURT—You mean the assignment of the claim of your wife? A. Yes, sir.

Q. Of this $110,000 how much was for money, and how much was for profit? A. I don't know anything about that settlement; Hendrickson told me that he had received $11,000; I know nothing about it, for it was not settled with my consent, and I had nothing to do with it.

Q. You never did consent? A. No, sir.

Q. What was the amount advanced? A. $3,750 and then $2,500.

Q. And the claim was $17,000? A. Yes.

Q. That was the account of so many guns? A.—The claim was about

$19,000, but there was a balance of $2,000 for which I gave my note to Marston, and which Opdyke cashed; that was to be deducted from the $19,000.

Q. That left you a claim of $17,000? A. Yes; and some odd hundreds.

Q. On what basis did that claim rest? A. On the agreement of $2 a gun.

Mr. Field objected, as the claim appeared in the complaint.

The Court—The only question is whether it is material to meet the allegations in the libel.

Mr. Evarts—It is material to show that the claim of $17,000 was made out of the moneys advanced and the interest. Mrs. McNeil was entitled to draw out of the concern, and for her share of the profits on the manufacture of 7,000 carbines. And it is material on the idea that by the money he had received from the city, Opdyke had in his pocket profits on 7,000 carbines, and that if he had paid these $19,000 he would have paid Mrs. McNeil's interest on her share of the proceeds on that basis, just as he got it from the city.

The Court—I think it is competent to meet this part of the libel if the city having paid handsomely and promptly, and he refused to divide the profits fairly, Mrs. McNeil commenced the suit against him.

Mr. Field—Then they want to show that "Oily Gammon" did not divide the profits fairly.

Mr. Evarts—Who do your refer to as Oily Gammon?

Mr. Field—Who did you refer to?

Mr. Evarts—I did not refer to any Oily Gammon.

Mr. Field—Your client did, then.

Examination resumed.—Q. How much was costs, and how much was profits? A. I was to have, after deducting 25 cents, $2 a gun. These 25 cents were to go to Opdyke, toward paying him for the money he advanced over and above what my wife advanced; then Farley was to have 60 cents, and Jones 50 cents a gun, by my allowing Mr. Opdyke 25 cents, and 5 cents toward Farley, that gave Farley 30 cents and me 30 cents, and that left me $1.70 a gun; this money was not due to me until after the guns were made and sold.

Q. You knew Mr. Andrews well? A. Yes, sir.

Now we come to the $10,000 matter between Andrews and Opdyke, and you go on and tell us all about that? Well sir, I met Mr. Andrews, I think it was at the corner of Twenty-third street and Broadway, at an oyster house there, and Andrews said to me—

Mr. Field—I object. Was Mr. Opdyke present? A. No.

The Court—Go to the question with Opdyke.

Witness—Well I went to Mr. Opdyke and told him that Andrews would give him $10,000, that he could collect, or cause to be collected, $10,000 out of the Custom-house, if he (Opdyke) would go for Andrews for Surveyor of the Port of New York.

Q. What was said about Stanton at this time? A. Nothing at this time; but he agreed to set Stanton aside and to go for Andrews.

Q. How came you to say this to Opdyke?

Mr. Field objected, except he told Opdyke.

Witness—I told Opdyke all.

Q. Well, go on with Andrews.

Witness—Hadn't I better finish up with Opdyke? [Laughter.] The fact is, I don't want you to put words into my mouth; Opdyke said to me, "Won't this Andrews cheat me?" I said that, "I didn't know, I didn't think he would; however, if you want anybody else to help you through it, pick out your man and we will go to Andrews together," and he picked out Amor J. Williamson; I then went to Mr. Williamson.

Q. I want you to come to the time when you first saw Andrews, and tell us what passed between him and you? A. Andrews told me that if I would intercede with Opdyke to go for him as Surveyor of the Port, he would collect or cause to be collected out of the Custom-house $10,000 towards his next election for Mayor, as Opdyke expected to run the next Fall.

Q. Where did this conversation take place? A. Twenty-third street and Broadway, at the oyster house I spoke of.

Q. Where did you next meet Andrews? A. The next time I met Williamson and Andrews together, and in the conversation that ensued between us, Andrews again made the offer that he would collect, or cause to be collected, out of the Custom House for Mr. Opdyke, $10,000.

MR. FIELD—Was Opdyke present? A. No.

MR. FIELD—Then I object.

THE COURT—It is admissable, inasmuch as the wituess bore this conversation to Mr. Opdyke; he brought a message from Opdyke to Andrews, or Williamson did, and he returned to Mr. Opdyke and communicated to him the result.

MR FIELD—I cannot help the witness saying anything.

MR. EVARTS (warmly.)—I appeal to the Court if this is a proper way to conduct a case?

THE COURT—It is not necessary to address these remarks to a witness. All that took place between the witness and Andrews, in the first instance, so far as the witness bore it from Andrews to Opdyke, that is admissible. Then, after that, Opdyke directs this man to continue the negotiations on this very subject, and whatever transpired at that interview is undoubtedly admissable, he having communicated to Opdyke.

Examination resumed—Q. What did Opdyke say to you about picking out another man? For what purpose was he to pick another man? A. To go with me to see Andrews, and to make an agreement for him; he was at that time about setting Stanton aside, and going for him (Andrews), for $10,000; Opdyke said that.

Q. What was all that was said about the other man being selected to see Andrews, that you two should see Andrews, as he was afraid Andrews might cheat him? Did he say about that being satisfactory or otherwise? A. When I told Opdyke this story about Andrews, Opdyke asked me if he would cheat him; I answered, and said I did'nt think he would; that I did'nt know, but for him to get somebody else, if he pleased, to go with me; I told him to pick his man, and he picked Amor J. Williamson as the man to go with me.

THE COURT—State what Opdyke said about Williamson to you. Give as near a as you can his words. A. He said he would pick Amor J. Williamson.

Q. How did you know he chose him? A. He called him by name; I then went and saw Williamson and told him what Andrews had said, and what Opdyke had said.

MR. FIELD—I object to this. Witness does not say what Opdyke said about Williamson.

THE COURT—For what purpose was he chosen? A. To go with me to Andrews; to go and make this bargain with Andrews and me; I told Williamson what Andrews had done, and what Opdyke had done, and that Opdyke wanted us to go together, to conclude the bargain; we saw Andrews at the same place, and I told him that Mr. Williamson had been chosen by Mr. Opdyke to come there and see what could be done with regard to the bargain that was to be made between him and Opdyke to get him the situation of Surveyor of the Port; Andrews then repeated what he said before, that he would give Opdyke $10,000, which he could collect, or cause to be collected, out of the Custom-house for his election, if he, (Opdyke), would lend Andrews his influence in getting him the appointment of Surveyor of the Port.

Q. After that you saw Opdyke? A. Yes; Opdyke after that told me to tell Williamson that he wanted to see him; he told me whenever this was done to tell Williamson he wanted to see him.

BY THE COURT—What response was made by you or Williamson to the offer of Andrews? A. Williamson was to go to Opdyke and tell him what Andrews had agreed to do.

Q. Who told you to communicate with Opdyke? A. Opdyke told me to ask Williamson to come and report to him about the bargain that was concluded with Andrews.

Q. Do you know whether Williamson did report to Opdyke? A. Yes, sir, for afterward when I saw Opdyke I asked him if he had seen Williamson, and he said he had; I then asked him if the matter had been satisfactorily arranged, and he said it was, and, in a few days after this, Andrews had his appointment. He came

back to New York and I was the first man he came to see, and he appeared grateful to me for bringing the thing round as I had.

MR. FIELD objected to the evidence.

THE COURT to witness—Go on and tell it right straight through now?

WITNESS—When Andrews saw me he thanked me for my share of the business; he said that Opdyke had got him the position, and that he would carry out to the letter what he had agreed to, that he would help me to anything; that if I wanted to have any man appointed to name three or four, and he would have them appointed to situations, he then went with me to Williamson to thank him, but we did not find him in his office, I think.

Q. What did Andrews say to you when he first applied to you for your interest in the matter? A. He asked me to get Opdyke to get him the appointment, and I said to him, what object will you make it to Opdyke if he gets you the appointment; you know that he has a man named Stanton, and he is trying to get the appointment for him; he didn't say how much then; I don't recollect whether it was he or I who first mentioned the $16,000; that is all was about it?

Q. Who was this Stanton? A. I don't know.

Q. Was he in the Custom-house? A. I don't know anything about him.

Q. Was his name H. B. Stanton? A. I don't know what his name was.

Q. How did you know that Opdyke had a man of that name? A. Opdyke told me; he said he had been trying to get Stanton appointed; but he thought he hadn't much chance; at any rate he said that he would drop him, and I think he said, "I will go for Andrews if this thing is arranged to my satisfaction."

Q. Did you go to Washington after that? A. Yes.

Q. Did you meet Opdyke or Andrews there? A. It was a long time after the election; Andrews never gave me any appointment; he forgot all about that; I brought my men to him many times, but he never gave me the appointments; next I met him in the hall of Willard's Hotel, and I commenced a conversation with him. I said: "You are not satisfied with cheating me, but you have cheated Opdyke, too; you agreed to give him $10,000, but he says you gave him only $7,000; and he said Opdyke got the whole $10,000; at that moment somebody tapped me on my shoulder, and I looked round and saw Opdyke; he said: "Come, Charley, and take dinner with me;" I said: "No, sir, I don't want to dine with you; I want to have some more conversation with this man."

Q. Did Opdyke tell you that he got but $7,000? A. Yes; he told me that in New York; I asked him after his election if Andrews had given him the $10,000, and he said, "No, he only gave $7,000."

Cross-examined by MR. FIELD. Q. You entertained the most friendly feelings toward Mr. Opdyke?—A. Yes, sir, the most friendly in the world.

Q. And you do still? A. No, sir; I should think not.

Q. Then you have changed your feelings toward him?—A. I should say so.

Q. When did your feelings begin to change? A. After the burning of the gun factory.

Previous to that you were on the best of terms?—A. I should think so.

Q. And you would not dine with him in Washington? A. No, sir.

Q. You say that this property was your wife's property? A. Yes, sir.

Q. Where did she get it? A. She got $5,000 from Hendrickson for this very purpose—for the gun business.

Q. Did you borrow it? A. I hired it.

Q. Had your wife any private property of her own? A. Yes; she had property she got from her father's estate; I think from $1,200 to $2,000; and from her brother's estate also.

Q. When were you married? A. In 1831.

Q. When did she get the money from the estate? A. In 1852 or '3.

Q. What become of it? A. I don't know.

Q. Did you spend it? A. I might; I can't say that I did not.

Q. What became of it? A. I don't know.

Q. Was it all gone? A. I don't say that.

Q. Have you any idea whether it was gone in 1860?—A. I cannot tell, sir.

Q. What came from her brother's estate? A. Some $400.

Q. What became of that? A. I cannot tell.
Q. Did any of it remain in 1860? A. I should think it did.
Q. In what shape? A. With herself.
Q. Do you think she retained some of the money? A. I do mean to say that I think from 1850 to 1860 she retained some $400.
Q. In what form did she retain it? A. I don't know.
Q. You don't know what it was? A. No.
Q. In 1861 she borrowed this money from Hendrickson? A. Yes.
Q. Is he a relative of hers or of yours? A. No.
Q. Who asked Hendrickson for this money? A. I asked once.
Q. You were much in debt then? A. Yes, and still am.
Q There were a great many judgments against you? A. Yes, and there still are.
Q. Can you state for how much you were a bankrupt? A. No, sir.
Q. Can you state within $20,000? A. Well, I think it was within the neighborhood of $20,000 or $25,000, and I have been so for the last fourteen years.
Q. When this money was borrowed from Hendrickson, did your wife take part in the borrowing? A. Yes. sir.
Q. Where did it take place? A. In the first place I got that contract for Hendrickson to make the guns; it was his money; I got the contract three years ago this month; I borrowed the money of Hendrickson, and after I came to New York my wife agreed to buy that contract from Hendrickson.
Q. Did your wife see Opdyke about it? A. I don't know.
Q. How did she agree with Opdyke? A. I agreed for her.
Q. Had she up to that time any property? A. She had a silver set to the amount of $1,500; she had money, but how much I don't know; and she had furniture—how much I don't know.
Q. Was the silver or the furniture sold for this purpose? A. No, sir.
Q. Did any of his money go toward it? A. No.
Q. Your wife's note was given? A. Yes.
Q. Was not this to guard against your creditors? A. Oh! no; it was a matter of honor.
Q. And you got your wife to swear to the complaint that it was separate property. A.—I did not; a lawyer may.
Q. Did you employ the lawyer? A. Yes, I first spoke to him.
Q. You are a member of the Legislature at Albany? A. Yes.
Q. And you got acquainted there with Mr. Weed? A. I have known Mr. Weed, I think, for ten years; not personally, but I have known him for that time.
Q. When you were a member of the Legislature were you not very intimate with him? A. No.
Q. Were there any railroads put through during your term? A. There were some bills presented, but none of them passed.
Q. Did you see him during your term in the Legislature? A. Last winter I saw him in.
Q. You say he had nothing to do with the settlement of your suit? A. Yes.
Q. And you had not? No, sir.
Q. Is that paper signed by you? A. Yes.
Mr. Field offered in evidence a power of attorney, signed by Charles McNeil, and dated 23d November, 1864.
Q. Is that the date the suit was settled? A. I don't know.
Q. Was that suit settled precisely on the terms Opdyke offered to you before the suit was commenced? A. No, sir-ee. [Laughter.] Opdyke never offered to settle with me; if he did, it was through a third party.
Paper handed to witnsss.
Q. Is that signed by Bernardus Hendrickson? A. Yes.
Q. Is that paper [paper shown to witness] signed by your wife, Elizabeth McNeil? A. Yes, sir.
Mr. Field—I offer this in evidence, as the assignment of the claim of Elizabeth McNeil and Bernardus Hendrickson; also, an order substituting Hendrickson in

her place. [Objected to and sustained; papers excluded for the present.] When was the first agreement made between you and Opdyke with reference to the manufactures of the carbines? A. I don't recollect the time, but it was before we went to Washington to get the contract. Farlee went with me, the agreement was made finally on the day it was made, and the writing will show what day, that day was; [laughter;] Opdyke's name did not appear on the contract; when the agreement was made, Opdyke, Farlee, Mrs. McNeil and myself were present; I cannot now recollect what was particularly said by any of the parties; this was in Farlee's office in Wall street; cannot recollect a word of what was said, but to collect the profit he was to receive on the guns manufactured; the contract was not obtained at Washington in the form as was expected, and Farlee refused to have anything to do with it; after we returned saw Mr. Opdyke in his own house; told him that the contract could not be got as we expected; that we could not get twenty thousand contract, but we could get ten thousand gun contract by paying $7,500; told him all I had done, and asked him if he was willing to go in on halves; we were to get the guns manufactured by Marston; the original contract with Marston was $18 a gun.

Q. Were you at the fire when the factory was burned? A. Was there before it began; went to the Mayor's office and told him that there had been a mob there, and wanted to know what he was going to do; he appeared very much frightened; knew that a claim had been made for the fire; dont't think he told the Mayor that the claim was too small, nor anybody else.

Q. You saw the Mayor in his office? A. Yes.

Q. State what occurred between you? A. Told me to meet him at his house that night, and Farlee would be there, when everything could be settled; supposed he asked for a settlement and for the money. Declined to meet him and Farlee alone, but said he would pick out a man to go with him, a personal friend of Opdyke, Mr. Williamson. There was nothing peculiar about the Mayor the day of the fire, but he looked a little queer always.

Mr. Field commented on the opening of Counsel and said it was the most extraordinary speech he had ever heard. He would call counsel and client to account if everything asserted was not proved.

The Court then adjourned to 10 o'clock.

FOURTH DAY.

FRIDAY, DECEMBER 16TH, 1864.

CROSS-EXAMINATION OF CHARLES McNEIL, CONTINUED.

On the opening of the Court, the cross-examination of the witness, Charles McNeil, was continued by Mr. Field, as follows: In the bargain for the purchase of Marston's interest, witness acted on behalf of his wife in trying to get Marston to sell out to Mr. Opdyke for the price Mr. Opdyke offered; witness succeeded by giving his note for $2,000; the transfer was made to Mr. Farlee for Mr. Opdyke's benefit; witness had no interest in the transfer any further than $2 per gun; understood nobody had any interest in it except Mr. Opdyke; witness did no business particularly in the concern after that time, and especially after the foreman was removed; witness was to have $2 a gun, less 30 cents, as Mr. Opdyke had invested $135,000; witness made this bargain with Mr. Farlee; Mr. Opdyke afterward asked witness, and witness told him he had made such a bargain; Opdyke then said he had reprimanded Farlee for making such a bargain, and asked witness to rescind it, and not consider it a bargain; witness said: "No, I could not do it, for everything had been done according to that agreement; the mortgage had been canceled before that; witness's wife had insured before that, and it was all in Mr. Opdyke's name, and I certainly should not do anything of the kind;" before this bargain was made, witness's wife's name was in the policy of insurance, and afterward it was removed; afterward he saw Mr. Opdyke at his own house and he denied Mr. Farlee had ever told

him he made such a contract; "Why," said witness, "what did you reprimand Mr. Farlee for?" he replied, "I never reprimanded Mr. Farlee, I reprimanded you;" said the witness, "what for?" he replied, "because you asked him to make such a bargain;" witness then called him the name he did, of course; witness did say Mr. Opdyke was a rascal; witness supposed counsel had read the testimony.

Counsel (Mr Field) made some remarks, and the Court remarked that counsel should not provoke the witness.

Witness did say Mr. Opdyke was a liar and a rascal; it was not for that he called Mr. Opdyke a swindler at Congress Hall, but because he did not give witness the money; Hendrickson has not paid over any money to witness, but has paid some to his wife, the next day, he believed, after he got it; the first interview witness ever had with any person on the subject of the Surveyorship was with Mr. Andrews at the corner of Twenty-third street and Broadway; it was about two weeks before he got the appointment; did not think they met by appointment the first time; it was in the outer saloon; witness did not own the saloon; had no interest in it; did not borrow money to fit it up; this meeting was in the evening; did not recollect having met him up stairs in a committee room; Mr. Andrews asked witness if he would use his influence with Mr. Opdyke to get him the appointment of Surveyor of the Port of New York; witness said: "Mr. Opdyke is working for a man by the name of Stanton; and I do not know whether he will be willing to leave his friend and go for you;" Andrews said: "I think you can make it all agreeable with him, and I will do anything that he asks;" witness said: "What object will you make it to Mr. Opdyke if he does drop Stanton to go for you?" witness did not remember whether he or Andrews mentioned the ten thousand dollars first; Andrews said he would give Mr. Opdyke, or cause it to be collected out of the Custom-house $10,000 if Mr. Opdyke would drop Mr. Stanton and go for him to get the appointment for Surveyor; he said he would either collect it, or cause it to be collected, out of the Custom-house; he said he would give it to Mr. Opdyke toward his election; witness said he would tell Mr. Opdyke; met Mr. Opdyke next day, at his store, and had a private interview; witness told Mr. Opdyke he had seen Mr. Andrews the night before, and he wanted witness to see Mr. Opdyke to get him to drop his friend Stanton and go for him for the Surveyorship, and that Mr. Andrews would give him $10,000 toward his election next Fall, as it was understood he would run for Mayor. Mr. Opdyke said, "Wont he cheat me?" Witness replied, "No, I don't think he will; I think he will do all that is right, but if you want anybody else to help me, call in your man and let him go with me." He said he would choose Mr. Williamson to go with witness and see Mr. Andrews, and if the bargain could be made satisfactory he would go for Mr. Andrews; witness did not remember anything else that he (witness) said; witness saw Mr. Williamson at his office, No. 11 Spruce street; Mr. Williamson and the witness went up that night and saw Mr. Andrew, at the corner of Twenty-third street and Broadway; he was to meet Mr. Andrews there; that was the next night after the first interview; the three, Andrews, Williamson, and witness, sat at a table; witness said to Mr. Williamson that, Mr. Andrews had promised him, the night before, if Mr. Opdyke would leave his friend Stanton and go for him for Surveyor, he would collect, or cause to be collected, out of the Custom-house, ten thousand dollars for Mr. Opdyke's election; Mr. Andrews said to Mr. Williamson, "That is correct; I will do it;" witness did not remember what Mr. Williamson said just then; witness next went to Mr. Opdyke's and told him that Mr. Williamson had gone the night before and met Mr. Andrews, and that Mr. Andrews had agreed before Mr. Williamson the same as he did before witness, and that everything was all satisfactory; Mr. Opdyke said, "Where is Mr. Williamson? can I see him?" witness replied, "Yes, I suppose so;" witness went over and told Mr. Williamson Mr. Opdyke wanted to see him, and he started to go and see him (Opdyke); witness saw Mr. Opdyke the next day, he believed; when witness saw him again, Mr. Opdyke said Mr. Williamson had been there and seen him and said it was all satisfactory; witness was not present at that interview between Mr. Williamson and Mr. Opdyke; spoke to Mr. Andrews next after he came back from Washington; Mr. Andrews got his appointment, witness thought, within a week, thought Mr. Opdyke told him in his interview he would go to Washington that evening to carry out this arrangement; did not recollect going

to Mr. Opdyke's house while he was absent; afterward met Mr. Andrews at Mr. Opdyke's house the morning after Mr. Andrews returned; witness and Andrews walked down town together; Andrews thanked witness very kindly for what he had done; there was one more that he wanted to thank, and that was Mr. Williamson; onthe way down, Andrews said he wanted to do something for witness, and would give him appointments for two or three friends; they walked down to Mr. Williamson's office; Andrews had not previously promised him appointments for his friends, for he had not the office; certainly he could promise to give appointments before he got the office, as he is the best promiser witness ever saw, and the poorest performer; thought Mr. Williamson was not in when they called at his office, and Andrews said he would find him; he and Andrews separated on the corner of Nassau and Frankfort streets; saw Mr. Opdyke a few days before his election coming from the Custom-house where he had been to get the money; asked Mr. Opdyke if he had got his money; Mr. Opdyke answered "No," or that he had got a part; witness did all he could for Mr. Opdyke's nomination; no provision was made for the money in the event of Mr. Opdyke not being nominated; next saw Mr. Opdyke at his house after his election; witness said in effect, "Did Mr. Andrews do what he agreed to?" "No," said Mr. Opdyke, "he did not;" "How much did he do?" witness thought he said, "seven thousand dollars;" none of the money was for witness, but all of it for Mr. Opdyke.

Question by Mr. Field—Did you do anything more than to ask Andrews to make the customary collection from the Government officials towards this election? A. You may take it as you please: I asked him in the way I told you; whether it is customary or not I do not know.

Q. Did you take up a paper and figure up the amount of salaries, and the amount that could be collected at two per cent. from each? A. No, sir, I never did; how many there were in the Custom-house I do not know.

Q. Did you not know that Mr. Andrews and Mr. Opdyke were a good deal more confidential than you and Mr. Opdyke were? A. I did not; I should think he was not very intimate, as Mr Opdyke asked me when I told him, "Would he cheat me?" [Laughter.] In the campaign of 1861, Andrews was not Mr. Opdyke's intimate friend; witness was boss at that time; witness and Andrews got the "People's party" to go for Mr. Opdyke; both exerted their influence.

THE COURT remarked that the witness was exhausted, and there had been a great deal of repetition and a great deal of time consumed.

MR. FIELD said that the cross-examination had not been as long as the direct.

THE COURT said it ought not generally to be half as long. He made the remark that there had been a great deal of prolixity, tedious to the Jury and the Court. Is was due to the progress of the case that they should proceed as promptly as was consistent with doing justice.

MR. FIELD—Knowing the desire of the Court to see justice done, I can only say we shall proceed as rapidly as possible, and when I have gone too far, if you will tell me, I will abandon the case.

THE COURT—These remarks are not due to the Court, nor should the counsel make them.

MR. FIELD—I will conform to all the rules of the court.

THE COURT—I trust you will, and without this continual flinging at the Court. I dislike it.

MR. FIELD—There has not been any before, sir.

THE COURT—Yes.

MR. FIELD—Well, I was not aware of it; I have entirely misunderstood if there has been, because it has been wholly unintentional, and not in the least degree understood.

The interview at Washington occurred while Congress was in session; thought it was in February; Mr. Opdyke might have gone with him, but he was not certain; witness went on another business—for Mr. Opdyke, however; witness was not conscious that was doing anything wrong in what he did.

EX-JUDGE PIERREPONT submitted that questioning a witness as to his views of morality was not proper.

THE COURT, after hearing some argument, allowed the counsel to question the witness for the purpose of eliciting evidence affecting his credibility.

Witness did not think anything about the right or wrong of the matter; had held office under the City Government—about five years in the street department, and about five years under the tax commissioners; never raised money from the employes to lobby for the tax commissioners; did not ask Mr. Andrews to have the ten thousand dollars put into his own hands. After some more unimportant questions, the cross-examination closed.

Re-direct by Ex-Judge Pierrepont: Witness was shown a stipulation of the settlement of the McNeil-Opdyke suit, signed by B. Hendrickson.

Never saw the paper before; never gave direction or order to have such a paper made; never heard of its being made until he came into court.

Witness was shown a paper giving power of attorney to Mr. Hendrickson.

Witness recollected signing a power of attorney, which Mr. Hendrickson said he would have to have to go into court; Mr. Hendrickson brought him the paper, which he signed; he was going into court on the morning of this suit of McNeil against Opdyke, and wanted this power of attorney to act in the case; did not think Mr. Hendrickson said anything about settling; did not give the witness any such idea to his knowledge; never gave any authority, verbally or otherwise, to enter into this settlement; did not know Hendrickson was going to settle it.

Ex-Judge Pierrepont was then about to question the witness about the business for Mr. Opdyke, on which he went to Washington.

Witness went there for the purpose of selling army blankets for Mr. Opdyke.

Ex-Judge Emott objected to the evidence as forming an attempt at justification on a separate part of the libel.

After some discussion it was admitted.

Witness stated Mr. Opdyke asked him to sell some blankets for him, some 170,000 pairs, to the Government; witness went to Washington, but did not succeed in selling them.

TESTIMONY OF BERNARDUS HENDRICKSON.

Bernardus Hendrickson, sworn: In the fall of 1861 McNeil wished him to advance some money to go into a government contract which he had got; the contract was got by McNeil in witness' name.

Witness then reviewed the history of the contract essentially, as was previously done. The power of attorney referred to was for the purpose of the McNeil-Opdyke suit; witness did not tell McNeil he wanted it to settle the suit; it was drawn up by Amor J. Williamson, at Mr. Opdyke's rooms in the Fifth Avenue Hotel; the conversation with Mr. Opdyke at that time they both considered confidential, and he told Mr. Opdyke as far as he was concerned, it was a matter that never should come into court.

Mr. Field—We will release him from that obligation. Next day he met Mr. Farlee, Mr. Williamson, and Mr. Opdyke at Mr. Opdyke's rooms, and talked the matter over in regard to the settlement of this suit; witness told Mr. Opdyke he held the interest assigned in this suit, and was anxious to bring it to a close; asked Mr. Opdyke what he proposed to give; Mr. Opdyke said he had always purposed to give what profits were made with the money McNeil had put in; as near as he (Opdyke) could calculate, there were two thousand dollars profit, and he was willing it should go to McNeil; he could not do any more than that; next day he saw him again, and Mr. Opdyke said Farlee had reckoned up fifteen hundred dollars more, making some eleven thousand; they finally agreed to settle at this sum; witness did not tell McNeil he had done so; did not think he knew anything about it until afterwards; witness signed the stipulation.

Counsel read the stipulation, stating that the suit should be settled "on the precise terms offered by the defendant before the suit had been commenced."

The paper was written by Mr. Opdyke's son, in Mr. Field's office; it was then read, or appeared to be read, to witness, who signed it; witness thought he had said something to Mrs. McNeil that he was trying to settle this suit; the McNeils first knew he had settled it when he paid Mrs. McNeil the money that afternoon.

A long cross-examination by Mr. Field took place, but nothing important was elicited, It was all about the manner of signing this stipulation.

TESTIMONY OF JOHN W. KEENE.

JOHN W. KEENE, sworn. Was engaged in the manufactory of arms, and has been for twenty-two years; went into this gun factory that was burned, in the middle of February, 1863; was in charge of the mechanical portion of it; knew all that was going on in the factory; knew what goods were in it, and all about it; after the fire occurred, there was preparation to make a claim against the city; Mr. Jones call upon witness in relation to making it; witness made up the claim as was presented to the city; in making up that claim, the basis of value of a gun made, finished, and delivered; the whole account was not made up on that basis.

The witness entered into a long exposition of the items of the bill as he made it up, which could hardly be transferred to paper with much intelligibility.

Q. In point of fact, did all the guns that were charged to the city cost all that they are charged. A. Yes, sir, and more money.

Q. If Mr. Farlee had made up an account charging simply his outlay, would it have amounted to more than the account paid? A. It would.

Q. Of the carbines charged in this account there is no single arm upon which work had not been done in the factory? A. No, sir.

Q. You stated that the average loss is only about 6 per cent.; when you allowed 12½ per cent. it was a variation to the disadvantage of Mr. Farlee? A. It so appears in the figures, certainly.

Q. It increases the deduction from the contract price? A. Yes, sir.

Q. In making up the account, did you not omit entirely interest on the capital? A. Yes, sir.

Q. What rate of interest ought to be given to capital employed in the making of guns, considering its risks? A. It ought to be considerably large.

Q. A great deal more than seven per cent.? A. Oh, yes; it ought to be double that invested in that business.

Q. There is no mention made in this calculation of the royalty to the patentee? A. No, sir.

Q. How much was that? A. That I cannot state positively; I understood it was $3.50.

Q. Was there any other place in the country where these kind of guns were made? A. No, sir.

Q. Was there any other place where it could have been made six months after the fire? A. No, sir.

Q. Was there any other place, in your judgment, where they could have been made at all without making new works? A. Not without adjusting tools and machinery; certainly not.

Q. It requires the adjustment of machinery and tools to do it? A. Yes, sir, as all guns do.

Q. On the morning after the fire, what could the machinery and tools which were thus adjusted have been replaced in the factory for, if it could have been done in an instant? A. It couldn't have been done in an instant; in the first place, it couldn't have been replaced there in less than nine months, at the least calculation; at the time it was destroyed, we should have had to pay 35 per cent. in advance of what the machinery was then worth, replacing it in the time of nine months, which, added to $97,929, would foot up the machinery and the tools alone at $130,000.

Q. And then at the end of nine months it would not be as good as it was before? A. It would not be so pliable.

Q. Then it would have required $130,000, or fifteen months' time to replace that establishment? A. Yes, sir.

Q. As to the guns, could they have been duplicated anywhere? A. I do not think they could at that time.

Q. Are you well acquainted with Remington's establishment? A. Yes, sir.

Q. What would Remington have made those guns for? A. Twenty-two dollars; he wanted twelve months to make the first delivery of a thousand guns.

Q. Are you now employed by Remington in his establishment? A. Yes, sir.

Q. At the time of the fire you were turning out guns at the rate of about fifty per day? A. Yes, sir.

Q. In your judgment is the fair value of a finished gun like that the contract price, less what it would cost to finish it. [Objection offered and sustained.]

Q. How long had you been in this establishment? A. About five months.

Q. When you took hold of it, it was in a low condition? A. Yes, sir.

Q. Had you been working at a great disadvantage until about the time of the fire, and at a much higher rate of cost than afterward? A. In some respects we had.

Q. At the time of the fire, all was in perfect working order? A. I so consider it.

Q. Was the machinery in the building adapted to anything else than the making of that particular carbine? A. Yes, the milling machine, for instance; the small tools were not adapted to any other arm; but the machinery and general rule was adapted to a musket or a breech-loading gun.

Q. About what proportion of the whole was adapted solely to this business? A. About one-third.

Q. In this statement of $16.48 you swear that the guns from that time forward could be made at that rate, and not that they had been made at that rate? A. No, sir.

Q. Were the tools made in the manufactory for this particular purpose? A. Yes, sir.

Q. How long did it take to make them? A. That I could not answer; they had been running there over twelve months when I went there.

Q. You could not tell how long they had been in operation? A. No, sir.

Q. What did you do with the account when you had thus made it up? A. I left it with Mr. Farlee, I believe.

Q. Did you at any time go before the Supervisors, with the account, to explain about it? A. Yes, sir.

Q. This is the account that was finally settled? A. Yes, sir.

Q. You have spoken of the waste of iron and steel; was that iron and steel in the shop? A. Certainly.

Q. How did you buy it? A. In quantity in the market.

Q. What kind did you use for the guns? A. I bought the best material we could find in the market. We used the English gun iron and steel of different descriptions from different manufactories.

Q. When the fire occurred had you any of that iron and steel on hand? A. Yes, sir.

Q. How much had you on hand in the condition in which it was bought? A. We had considerable more than is charged in that bill; I could not tell exactly what we had; independent to what we had worked up in parts, I think very likely there might have been two tons there, it might be more—all of that; we had a third more iron than we had steel; we bought it in large quantities; we paid 13 cents a pound for iron and 28 cents a pound for steel at that time.

Cross-examined by Mr. Field.—Q. Were you before the Supervisors when this claim was under discussion? A. I was.

Q. Were you examined at length? Yes, sir.

Q. For how many different days? A. I think I was there three different days.

Q. Did Mr. Orison Blunt examine you? A. Yes, sir.

Q. Was he a gunmaker? A. He told me he was.

Q. He was one of the Supervisors? Yes, sir.

Q. Did you explain to him exactly how this account was made up? A. I did.

Q. Did you tell him this was the contract price to the Government. A. I did.

Q. That you took that and deducted what it would cost to finish? A. I did.

Q. How many of the Supervisors were present when this examination was going on? A. Two or three in the room; there were some other cases on at the time ours was; I think part of the time there were two or more present.

Q Did Mr. Blunt cross-examine you very closely? A. Yes, sir.

Q. Is there anything in this account, either as it appears in this paper, or as you have detailed it to the Jury, that was not explained to him? A. I think not anything.

Q. What directions did you receive from Mr. Opdyke about making up the account or claim against the city? A. None whatever.

Q. The services of this committee were public in the City Hall? A. Yes, sir.
Q. Had the committee counsel? A. I believe they had.
Q. And secretary? A. I believe so.
Q. No counsel represented Mr. Opdyke on this occasion? A. No, sir.
Q. He was not himself there? A. No, sir.
Q. Did you make up the account according to what you supposed was just? A. I did; if I had not, I should not have done it.
Q. Have you any doubt about its justice now? A. No, sir; I would swear to it until I was blind.
Q. Were all the materials charged in this account actually there? A. Yes, sir.
Q. Were the prices charged there true? A. Yes, sir.
Q. Are all the computations true? A. Yes, sir.
Q. What has been your experience? A. I have worked some 22 years at the business in different parts of the country; I have been employed in all the different armories, previous to the rebellion, in the States; I have worked in Springfield, Harper's Ferry, Chicopee Falls, &c.
Q. Do you recollect anything having been said by Mr Opdyke about the cost to be charged to the city for machinery? A. Yes, sir, I recollect my telling him I should add 25 or 30 per cent. to the cost of the machinery; I believe it was more than worth it.
Q. Have you any doubt, whatever, that the machinery and tools were worth 30 per cent on the market value, over and above what was charged? A. Thirty-five; it is my solid conviction that at that time they could not have been purchased for less than 35 per cent above the cost.
Q. Does not machinery improve for the first few months? A. New machinery is not near so good when first purchased as after it is run three to six months.
Q. This machinery was all in perfect condition? A. Yes, sir.
Q. When you told Mr. Opdyke you thought he ought to add the increased value of this stock, what did he tell you? He told me he would not allow it.
Q. Did he give you any reason for not allowing it? No, sir; I did not ask any.
Q. Who helped you to make up this account? A. Mr. Passett, the book-keeper.
Q. Were all the books of the concern burned in the fire? A. All except the cash-book.
Q. Did you attend the auction sale of the damaged articles? A. No, sir.
Q. When the factory was going on, was Mr. Opdyke much there? A. I believe he was occasionally—once or twice a week.
Q. Did he have any acquaintance with the details of the business? A. I think not.
Q. Did he know the material on hand, or the state of manufacture in which it was? A. I think not.
Q. Did Mr. Opdyke give you any other direction about making up this account except that you must not charge an increased price in the machinery and tools? A. He charged me to be very careful and get it correct.
Q. Did he say to you, from the fact that he was Mayor that he would not allow any claim to go to the city that was questionable? A. It strikes me he did.
Re-direct by Mr. Evarts.—Q. What do you mean by saying the factory was in a low condition when you went there? A. I mean that it had not been conducted as it ought to have been.
Q. But was it in a losing condition? A. I don't know about the losses of the concern; that I cannot say anything about, but this I will say, that it had been long enough in operation to produce more than that.
Q. Its failure to produce would be necessarily a loss to its owners? A. Naturally; it would be an expense, certainly.
Q. Do you not consider saying it was in a low condition equivalent to saying it was a losing concern, more than any other establishment of the kind? A. All establishments, particularly in gun business, are conducted in about the same manner; I think that establishment had been conducted as well as any other of the sort.
Q. How do you know about the management of that concern? A. I don't know, only for the length of the time it had been going on.

Q. Well, what did you mean by saying in a low condition? A. I don't know exactly what you mean, except when I told you I thought it should have produced more than it had.

Q. You say it was in perfect working order about the time of the fire? A. Yes.

Q. How long had it been in perfect working order before that? A. Some three or four months, I suppose.

Q. You say that in this statement of the arms, as you made it up, and as it was presented and paid for by the city, there was no account of the royalty on these incomplete arms? A I did not take that into consideration; I knew nothing about it.

Q. What do you take into consideration in stating for the value of the market as $24.70 a gun? A. Labor and material, and the necessary expenses to complete them.

Q. What! is labor and material to make the market price? A. No.

Q. I ask you as to all you did take into account in fixing $24.70, which you took as a basis for your calculation, how did you arrive at the $24.70? A. That was the contract price the Government was to pay.

Q. Didn't that include the royalty the parties had to pay patentees? A. I suppose it did; I thought you asked me if, in making the claim, I calculated the royalty.

Q. You were asked if the royalty appeared in the claim against the State?

Mr. Field—No, you asked him if the royalty appeared in the estimate of $16.48 a gun.

Q. You have said that $16.48 was the cost of making guns there—material and labor as it was then going—how long had that been the cost? A. We had not built the guns for that; they really cost more.

Q. How long had $16.48 been the cost of manufacturing these guns, as you stated?

By the Court—How many days had you been bringing out fifty guns a day from that establishment? A. Only for a short time before the fire.

By the Court—That cost was based on the manufacture of fifty a day? A. Yes. sir.

By Mr. Evarts—Q. How long had $16.48 represented the cost? A. Probably we had been in a condition to run at that rate for six weeks or two months.

Q. How long had the concern been in a condition to turn out guns at all? A. About that length of time.

Q. What would it have cost to cast a gun in that factory before it was in a condition to make any? A. It would be hard to estimate.

Q. During the whole six weeks or two months you were working the concern making guns, $16 48 was the cost of manufacture? A. That was the figure on which the claim was based.

Q. What do you mean by saying that these guns that you have put down at this price, and varying from $22 to $31, cost more than the sum you have stated? Because I believe they would cost more.

Q. Explain what you mean? A. I mean that in starting a new armory of any kind, in constructing machinery, in getting suitable tools ready, in taking in crude men and getting them systematized and adapted to their different branches of the work—all this takes time and money, and I believe these arms, as charged there, would cost a good deal more.

Q. You mean, then, that starting a factory, getting it to the point of production at the rate of fifty guns a-day, making these arms, taking in the whole establishment and working it on without profit up to that point of capability, would increase the cost beyond the sum charged here? A. Yes, sir.

Q. That is the idea? A. Yes, sir.

Q. You stated that you were before the Committee of Supervisors. Who requested you to go? A. I was requested by Mr. Farlee to attend.

Q. You stated that you thought this mode of making up the account was right, or that you would not have made it? A. Yes, sir.

Q. And you swear now it is right? Yes.

Q. Where did you get the idea of making it out that way? A. It was suggested to me by Loren Jones.

Q. Did you ever attempt to make up an account of the crude materials burned up—bar iron, steel, barrels, rough stocks, and other portions of the purchased material? A. I believe I figured out something of that kind in pencil.

Q. Was that figuring ever presented? A. No; I don't believe anybody ever saw it, except, probably, Mr. Jones.

Q. You say that you gave an account to that Committee. Answer all questions put to you. Have you looked at that pamphlet of your testimony since that time? A. No, sir.

Q. Turn to the sixteenth page of that pamphlet, the second paragraph, beginning, "The Inspector that inspected the arms." That was the first parcel that was completed, was it not? A. Yes.

Q. The next is 500 carbines, all finished in parts, and ready to assemble; on such work the men were all paid for the various parts at $22 70 a gun; is that right. A. Yes.

Q. Is that the way you stated the item? A. I believe that is the next.

Q, The next item is 1000 guns, also machinery, filed and stocked, at $21 30 per gun. You say, "I arrived at the price at what the article cost, counting waste, power, and expenses." Is that right? A. Yes.

Q. And so with the other items through the paragraph to the end. Is that the form in which you stated these facts to the Committee as to the manner in which this sum had been made up? A. Yes, that is the form I stated it in.

Q. You stated that Jones first suggested to you the idea of making out the account in this way. Now, while making it up, had you any conference, or received any suggestions from anybody, Jones included? A. From nobody, I believe, excepting the suggestion of Jones.

Q. How about Farlee? A. Farlee was sometimes present, but he did'nt claim to understand anything about it.

Q. Where was the work commenced, and who was present? A. It was finished in a building at the back of Exchange-place; it used to be Mr. Hughes's office.

Q. Did it take a great while to make it up in this way? A. I think two or three weeks.

Q. And during that time Farlee was present? A. Probably, I saw him once a day, and then once in two or three days.

Q. You told him what was going on? A. Yes.

Q. How long was Jones with you? A. I cannot say he was present at all, but I used to see him outside, on occasions.

Q. When you had the work completed, to whom did you show it or deliver it? A. To Farley.

Q. Is this a copy of the paper as you delivered it to him? A. Yes, that is a copy in a condensed form.

Q. Now as to the first foreman; what do you know about him? A. I don't know anything about him.

Q. His name was Knowlton? A. Yes.

Q. What evil or injury was in the establishment when you went there? A. The work was not going on in as good condition as it might be? I believe for the number of men engaged they were not doing as much work as might be done.

Q. This was the loss of the establishment? A. No doubt about that; it was at the expense of somebody.

Q. When you went there first who employed you; who did you see about employment? A. Farlee first, and then Mr. Opdyke.

Q. What instructions, if any, did you receive from Mr. Opdyke? A. Not any at all.

Q. Did he say anything to you about the condition of things at the factory? A. He told me things were unsatisfactory; I believe I asked him about the guns; what they were; he said the same things they were talking about, or something to that effect.

Q. Did he say anything about the loss he would be willing to sell out at? A. He never did to me.

Q. When you were before this Committee of Claims did anybody but Mr. Blunt examine you? A. No.

Q. Any person else present at the examination of you by Mr. Blunt; A. Yes; I cannot name the parties, but there were two or three around at the time.

Q. Now as to the machinery and tools that entered into this claim? did you have anything to do with making up the estimate? A. No.

Q. You had something to say to Mr. Opdyke as to the valuation made by somebody that it was not as high as it should be? A. That was as to the machinery as it was before.

Q. Now, did you say anything to him about the rate at which you would put these guns in the portion of the schedule that you would make up? A. No, not particularly; I don't know but something might have been said when he came to the office.

Q. What was that? A. I can say one thing about that—that he charged me to be correct.

Q. Did you show him the principle upon which you were doing it? A. Yes, sir.

Q. In the same manner that you are showing me? A. Just so.

Q. And he desired you to get it correct? A. That was his idea.

Re-Cross Examined—By Mr. Field, In the taking of your testimony was not a great deal that was said omitted? A. I think so.

Q. Is not this the way it was taken? [Mr. Evarts objected.]

The Court—It is competent to ascertain whether any of testimony was left out.

Mr. Emott—They cannot put the general question as to whether that document contains all the questions and answers; there is no question of verity; nothing which binds any one. These are a committee who employ somebody to make records of their proceedings and the original of that record is here.

Mr Evarts—Yes, and they are the basis of the action of that committee.

The Court—I have no doubt that it is competent to ask that question.

By Mr. Field—Is all that was said taken down as it appears there? A. All that was of any consideration was, I think; there may be some little things omitted.

Q Was not this the mode of conducting the examination; you and Blunt discussed the question first, and then Blunt would tell the clerk to write down so and so? A. That was the mode of getting at the result; we talked it over as two men would who were familiar with the matter, as Mr. Blunt and I were; then something would be written down.

Q. Was it your language or the language dictated by Mr. Blunt to the secretary?

Mr. Evarts objected.

The Court—You are asked whether the testimony was taken down as you gave it, or as Mr. Blunt dictated it? A. I think the most of it was taken down as I gave it; I recollect a good deal of it here.

Q. Was there not a good deal said between you and Mr. Blunt that is not here? A. No doubt; It seems to me that we talked a great deal more than would fill up the whole book.

Q. Did you not answer his various questions for whole minutes at a time, and nothing of it would be written? A. No doubt.

Q. You are asked what Jones did in making up the account; did not Jones tell you the claim would be made larger? A. I believe he said that he did not think it was large enough.

Q. Was there not a very considerable quantity of material destroyed not put in the account against the city? A. I think there was.

Q. To what amount was material not charged altogether? A. I think there was a lot of stock material not charged.

By the Court—About how much? A. Probably enough to complete four or five hundred guns not charged against the city, and all destroyed.

Re-direct—There was nothing important elicited on the further re-direct examination.

By Mr. Emott—There were parts rejected.

Q. Parts to make two hundred guns? A. Yes.

Q. In what condition were they? A. Nearly finished—naturally so, or they could not have been rejected.

Q. Rejected for defects in the forging? A. Government did not carry on an inspection beyond the barrels.

Q. You said something about the machinery and tools being worth 30 per cent. more than they went into the concern at; did you mean that they were worth that more in this establishment, or worth it as a matter of sale in the market? A. The question asked before, was whether they could be replaced for that sum, and I said it would cost 37 per cent. more than cost.

Q. Did you say it was worth that much more to replace it in that establishment, or that it would sell in the market at that advance if the establishment was disbanded? A. I meant to say that amount, owing to the high price of stock and labor at that time, over and above that which ruled when the machinery was purchased, it would have cost 35 per cent. more to replace it.

Q. You said that the machinery could only be used for that particular manufacture without a change? A. I said some portion of it.

By Mr. Evarts—You said you were employed by Mr. Remington—in what capacity? A. Superintending the mechanical portion of the work. Q. Did you pay the men? A. Yes. I draw the money and pay the men employed under me.

THE WORLD NEWSPAPER.

Mr. Emott handed to the Court a copy of the World newspaper of the 16th, and called attention to an article therein which he said was intended to influence the jury.

The Court cautioned the Jury against reading any comments on the trial that might appear in print, and even against conversing with any one on the subject.

The Court then adjourned to Monday, the 19th inst., at 10 A. M.

FIFTH DAY.

MONDAY, DECEMBER 19TH, 1864.

The trial was resumed this morning. There was the usual large attendance in court.

TESTIMONY OF WM. F. BROOKS.

Wm. F. Brooks, called for the defense, was examined by Mr. Pierrepont. I know Mr. Opdyke and Mr. McNeil; I procured the gun contract in question from the Government; Mr. McNeil was with me in Washington when I made it; I represented the patentees; the royalty was to be paid to me, as their representative.

Q. On the 1,000 which were made and delivered to the Government, what was your royalty? A. In the original contract the royalty was $6 50 on each gun; the contract was for 10,000 guns; I made it with McNeil, as agent of Hendrickson; subsequently that contract was turned over into another; the royalty was then reduced to $3 50; after the first contract had run out, I had it renewed, and, in consideration of the renewal, I had to reduce the price $3; on the first 500 delivered, the royalty was $6 50 each, amounting to $3,250; on the balance, 6,550 guns, the royalty was $3 50 each, amounting to $22,925, making $26,175; under our contract, the royalty was due us when the Government paid for the guns—not till then; my contract with McNeil was for 10,000 guns; after the fire occurred the remaining 3,000 guns were not made; I never got any royalty on these.

Q. How much did you receive? A. I received $11,068 as royalty; $7,500 of this I received at the time of making the contract; subsequently I received $2,068 in money; I received the $7,500 from McNeil; the $2,068 from Marston; subsequently I received $1,500 from Mr. Opdyke, but that was not in connection with this gun contract; it was a private matter, but merged into this finally; it was a payment on the royalty by turning a debt between us; deducting from $26,175 the sum of $11,068 paid, leaves $15,107.

Q. That, then, was the amount that you claimed on the guns which were paid for? A. Yes, if the guns had been delivered to the Government; this does not include the 7,000 guns not made; I saw Mr. Opdyke in relation to it; had not much to say to him; my conversation was mostly with Mr. Farlee; my first in-

terview was with Farlee; I met him once or twice at his office in Wall street; our next interview was at Mr. Opdyke's; I went up for the purpose of making a settlement with them; I think it was in November, 1863; I knew the city had paid; I saw it in the papers; Mr. Opdyke was present a short time.

Q. What was there said about its being a losing or gaining matter? A. It was my impression at the time, made upon me by the conversation with Mr. Farlee, that if it was not a losing matter, it was not a making matter; this conversation occurred at Mr. Opdyke's house; Mr. Opdyke was not present during all of it; I was conversing with Mr. Farlee, and Mr. Opdyke came in the latter part of the evening; after he came we had little to say; I simply suggested that I thought, under the circumstances, I should receive $10,000 in consideration of giving up the contract, and not obliging them to go on with it; they thought that was too much; the reason they gave me why they could not pay me $10,000 was that the money was not made; we parted at that; I subsequently called on Mr. Farlee; he offered me $5.000 to annul the obligation between us, which I accepted, and I got the money on the 4th of December, 1863; the contract was then annulled, and I think I handed it to Mr. Farlee.

Q. When you took the $5,000, did Farley or Opdyke tell you what they had got from the city. A. No, they did not; I knew the published statement of what they had received.

A. Did you know that they had been paid by the city on the basis of the same price that the Government would have paid if they had been completed? A. I did not; for the $5,000 I gave them a release in full of everything; that is all got; I represented the whole of the patentees.

Q. When you made this settlement, and received $5,000, would you have done that if you had known that they had received from the city, on the same basis as though they had delivered the guns to the Government?

Mr. Field objected, as immaterial.

Mr. Evarts said it was offered to exclude any conclusion that the witness settled for the royalties, knowing they had collected them from the city.

The Court ruled out the evidence. There is no point in the libel that implies that Mr. Opdyke has cheated the witness, or wronged him.

Cross-examined by Mr. Field—The gun contracted for was a very good gun, fully worth all the Government gave for it; can't say if Mr. Farlee thought he was at liberty to stop making the guns when he pleased; I thought the contract obliged them to make the whole 10,000; I do not think I asked him to go on after the destruction of the building; I told him I expected he would go on and finish it up; dont recollect his answer; knew when the claim against the city was being made out; I thought I had nothing to do with it; the whole contract should have been completed by the 1st of November, 1863; I think I claimed from Farlee at one time the royalty on all the guns charged to the city; I saw the number charged in a published document; I saw how it was made out before I got my pay.

Q. Before you went to Mr. Farlee, you knew exactly what Mr. Opdyke had got and what he had got it for? A. Yes, sir.

Re-direct—By Mr. Pierrepont. Did you look into the agreement enough to know the principle upon which it was made up? A. No, sir; I did not know the details; I saw the sum in the account, but did not know how they arrived at it. [Book shown witness by Mr. Field.] I saw the details so far as they were published in this book, before I got my pay [account on page 9 read in evidence from printed book.]

TESTIMONY OF AMOR J. WILLIAMSON.

Amor J. Williamson, sworn. Examined by counsel for defendant—I have been acquainted with the plaintiff six years; during the fall of 1861 I saw him nearly every day; for the last three years I have seen very little of him; I have known McNeil very well for ten years; I have seen him almost daily for the last three years; there was a time when I supposed McNeil was very intimate with the plaintiff, judging from what I heard him say, and the fact that he brought frequent messages to me from the plaintiff; I was at other times sent by Opdyke to communicate with McNeil; Opdyke was run for Mayor in 1859 and defeated, and in 1861

and elected; Andrews took his place as Surveyor before Opdyke was elected; some ten days or two weeks prior to Andrews getting his appointment, I met McNeil, about 9 or 10 o'clock in the morning; he said to me that Opdyke desired me to go with him (McNeil) and see Andrews that evening, at the corner of Twenty-third street and Broadway; I inquired what the particular business was; he told me that Andrews was willing to do something for Opdyke's benefit, if Opdyke would interest himself in his behalf for the purpose of securing the office of Surveyor of the Port of New York; that he was willing to raise $10,000 out of the Custom-house, and Opdyke desired me to go with him and ascertain whether Andrews would fairly carry out this proposition; in consequence of that meeting, I went to the place; it was an oyster saloon; we went into one of the private rooms, Andrews, McNeil, and myself; I believe the first thing in order was a bottle of champaign; after talking for awhile, McNeil said to Andrews, "It is about time now to commence business." I had no part in the conversation up to this time; he said, "Now I understand you are willing, if Mr. Opdyke gets you the office of Surveyor, to raise $10,000 out of the Custom-house, to support his election for the Mayoralty next fall." Andrews says, "Yes," and not only that, but he was a friend of Opdyke, and would do everything in his power to secure his election—raise even more money to secure it, or do anything that he could do; I suppose we were there about an hour; that is the substance; after the interview was over, McNeil inquired whether I was satisfied; I told him I thought Andrews would carry it out, he seemed to be very earnest about it and in good faith; he then requested me to call on Opdyke next morning and tell him that it was all right.

Q. As you parted at the door, what was said? A. I think we parted in the saloon; I have no recollection of anything occurring at the door; in the morning I called on Opdyke; I found him in his private office at the store; I told him I had been to see Andrews, as I understood, at his request, and the matter was entirely satisfactory; believed Andrews would carry out in good faith, what he proposed to do; he made no reply that I recollect, or simply "yes;" I think he simply quietly bowed his head (making a motion); I do not know that there was anything to be said; somewhere about two weeks after that, Andrews came into my office and said he had got the appointment, and thanked me for my supposed agency.

Q. What did Opdyke say, if anything, in regard to his having another candidate? A. There was nothing said, at that interview, on the subject; I had a conversation with Opdyke some time previous to that—I do not know how long—in which he spoke of his support of Stanton for that office.

Q. Did he say anything about Secretary Chase? A. He said, among other things, that he did not suppose that Mr. Chase, who was his friend, would make any appointment here without consulting him in reference to it.

Q. What led to his saying that? A. This conversation was in reference to Wakeman and Stanton; Andrews's name had come up, and he spoke of him as a probable compromise candidate, as the others, probably, could not be appointed; I think I objected to Andrews at that time, and told him I did not think it was safe.

Q. Had Opdyke been nominated then? A. He had not; we supposed we had the thing fixed, though it was still in doubt.

Q. After his election did you go to see him; if so, state what occurred on the subject of Andrews, or the money? A. The only thing I recollect touching that subject, was a conversation at his store, I think, in which he complained of the Custom-house not having raised the money which they had agreed to; my recollection is that he said they had only raised $7,000 or $7,500, whereas, "as you know," he said, "they agreed to raise $10,000."

Q. Were you at Mr. Opdyke's house after the fire, and did you meet Mr. McNeil there? A. I was; but I understand myself to be under obligation not to refer to what occurred; I went to a meeting where all the parties present agreed that whatever occurred should be left out.

Q. Who put you under obligation of secrecy? A. I think it was my own suggestion, as a friend of both parties; I am not sure; I know that we all agreed to it.

MR. FIELD—We release the witness from the obligation.

Q. Now state what occurred. A. There was a discussion between McNeil and

Opdyke as to a disputed claim; McNeil claimed that Opdyke was to pay him a certain amount on a certain basis, whereas Opdyke objected that it was not according to agreement; McNeil went on and made his statement; I do not kuow whether Opdyke commenced, or McNeil, but each went on to tell his story; I suppose I was sitting as a kind of judge, to see if we could not reconcile this thing; before they got through, however, the interview was broken up in jawing; McNeil was very much excited, and said some hard things against Opdyke, and left the house; I followed him to the door and tried to get him to come back, but did not succeed; I did not hear McNeil's testimony.

Q. Two or three weeks ago were you present at the Fifth avenue hotel when the subject of the McNeil was up? A. I was.

Q. Was that under injunction of secrecy? A. No. sir.

Q. Who were present? A. Opdyke, Hendrickson, and Farlee, and, I believe, for a few moments, one of Opdyke's sons; this power of attorney is in my hand writing; Farley drew it and I copied it.

Q. Did Hendrickson say anything about McNeil's being unlikely to execute this power, if so, what? A. I do not recollect; this paper was drawn up for the purpose ofcompleting the assignment, making it more perfect, as I understood; there was something said—I do not know whether by myself or Hendrickson—about McNeil not being satisfied with this settlement—might refuse to sign.

Q. In reply to that did Opdyke say anything, if so, what? A. I think he suggested that McNeil might be told that this was necessary to enable Hendrickson to go on with the suit.

Q. Did Opdyke at any time say anything to you in relation to any difficulty about getting this money out of the Custom-house? A. He did; I am not sure but that it was at the same time, (in 1861;) he claimed that Barney had treated him very unhandsomely in refusing to hand the money over to him direct—that he required the signature of the treasurers of the different organizations, whereas he himself had advanced money which this was to reimburse—advanced it to the general committee; that was in addition to his assessment.

Q. Was anything said about Ullman in any of these conversations—any share he was to have in it! A. I do not recollect his name being mentioned.

Q. Were you present at the Fifth Avenue Hotel on the Saturday evening when Hendrickson was there, before this power was drawn? A. I was not; I was there on the day preceding—on Sunday, when I wrote that power.

Q. Was anything then said about a previous conversation that occurred between Hendrickson, Opdyke, and Farley? A. I have no recollection.

Q. Was there anything said about discovering proofs that were not discovered before? A. There was something said about $1,500 that Farlee had discovered; it was something that Opdyke and Hendrickson had been talking about before I came in; Opdyke said he was willing to allow it in the settlement, provided, in examining his books next day, he found it to be correct.

Q. Did you know how this money was brought from the Custom House to Opdyke? Did he tell you? A. No, sir.

Q. Did he tell you about going there after it? A. I think he spoke of having called on Barney in reference to it, and he refused to pay it, and required the signatures or receipts from the treasurers of the different organizations to whom Opdyke had paid it.

Q. Is there anything more on either of these subjects that I have omitted? A. Nothing I think.

Cross-examined—Q. At the interview at Opdyke's house between you, him and McNeil, did not Opdyke offer to give McNeil, in settlement, all the money he had advanced with interest up to that time, and all the profits? A. He did.

Q. That was a distinct, positive offer made by him to McNeil at the time! A. Yes, sir.

Q. Was that before any suit was commenced by McNeil? A. I think so.

Q. Was not the injunction of secrecy suggested in consequence of a suit being possible or probable, so that nothing should be said by which you should be made a witness? A. Yes, sir.

Q. At the interview on Sunday, did not Opdyke appeal to you in the presence

of Hendrickson, whether he had not made precisely that offer to McNeil before the suit was brought? A. He did.

Q. And did you not say to Hendrickson that he had? A. I did.

Q. How did Hendrickson happen to go to Opdyke to settle? A. I suppose he did so at my suggestion. I was subpœnaed as a witness by Hendrickson on the Saturday before the trial, and after receiving it I suggested to Hendrickson the possibility of settling without going to trial; I was anxious to avoid being a witness, and I requested permission to go and see Opdyke, and see if I could not arrange an interview; I did so, and Opdyke consented to see him that evening; Hendrickson went to see him, so he said, and he told me he wanted me to go next day, at the request of Opdyke, to his house, and see the thing settled; I went, and found Hendrickson and Opdyke there.

Q. Opdyke had not made any approaches to make a settlement? A. Not to my knowledge.

Q. Did he not tell you at that interview at the hotel that he would still carry out that offer, and that he would not pay one single cent more? A. He did.

Q. Did he refuse to pay any interest from October, the time from which he had originally offered to pay it? A. There was some dispute about interest; I did not wholly understand what it was; they settled without allowing it.

Q. Did not Opdyke say he would not settle without having a release from Mr. and Mrs. McNeil and Hendrickson? A. I don't recollect the statement as strong as that; it was considered desirable, but not, as I understood, absolutely necessary.

Q. Did not the suggestion about McNeil being unwilling to sign come from you? A. I do not think it did: though we were all interested in whatever was done, Opdyke suggested, when it was supposed there would be some difficulty, that McNeil might be induced to sign this paper on the supposition that it was to be used in the suit on the following day; I coincided; I supposed there would be difficulty in getting him to sign.

Q. Did you suppose McNeil had any interest himself in the matter? A. I did not know how far he might have an interest behind Hendrickson; Hendrickson had power to settle.

Q. The only interview you had with Opdyke about Andrews getting his office was after the meeting at the oyster saloon? A. That was the only time I had anything to do with getting the appointment; we may have talked about it on other occasions.

Q. Was there anything said or done by Opdyke that, in your judgment, was in any way improper, in which you were connected? (Objected to; question allowed for the purpose of impeachment; exception taken.) A. I have never supposed so.

Q. Has it not been the uniform custom to collect moneys of the employes of the Government? A. We uniformly call upon them; we do not always get it; it is customary to collect at all elections from the Custom-house, by whichever party the offices are held.

Q. Was Opdyke nominated before or after the November election? A. After, I think; he was nominated by two political organizations. I was not concerned with any of the committees of nomination.

Q. Do you know that he declined for some days to accept? A. I do not recollect; it may have been so.

Q. After his acceptance, was there an assessment made upon Opdyke? A. I do not know of my own knowledge, though I have every reason to believe it was so; I was treasurer; the money advanced, I understood, was to the political committees; I do not know the sum; it was large, some $7,000 or $8,000; I have been Tax Commissioner for some years; McNeil has been assessor under me, and we have been in the same office for a number of years; I do not think I introduced him to Opdyke; it may be so; I have introduced many to him; I think McNeil went to Albany, with others, to get the law passed extending the Tax Commissioners' term of office.

Q. Did he not use all his efforts, as a member, to pass the bill in the next Legislature, after lobbying for it the year before? Objected to—excluded—exception taken.

Q. Did you not know that Andrews had no power over the majority of the offi-

cers in the Custom-house? A. I did not; I did not know the number of officials; I always supposed they were more in the Custom-house proper than under the Surveyor; I know nothing about how the assessments are made there.

Re-direct—The amount that Opdyke made up that he claimed was due to McNeil, was about $7,000, principal and interest, and about $1,100 as profits; which he said he was willing to give McNeil—the entire profits; Opdyke advanced his money to the committee; the treasurer of one of the organizations the day before the election came with Opdyke's check; the Custom-house had failed to respond to make up that money; it was to be repaid to Opdyke.

Q. How much besides those advances which were paid to him did he pay out of his own pocket? A. I can only answer for myself; I took him bills to the account of $4,000, which he paid; what he said to the treasurer of the General Committee I do not know; I have always understood it was $1,000—his assessment in one of the committees.

Q. Did he afterward tell you he had got it? A. I do not know that he ever did; my information on that was derived from other parties that he had got it after a good deal of trouble from Barney.

Re-cross—The $4,000 was a separate matter; the money refunded to him was for advances made to the committees.

Q. At Opdyke's house did he not say he would go with McNeil to Paret, the book-keeper, and get the exact amount? A. He did.

TESTIMONY OF ROBERT C. HUTCHINGS.

Robert C. Hutchings, sworn. Examined by Counsel for Defendant. I have been a practicing attorney since 1860; I am now Asssistant District Attorney; in 1863 I was employed by the committee of the Board of Supervisors on riot claims, to take the testimony; the claims were handed to the Comptroller and passed over to the committee; advertisements were made in the newspapers that a certain number would be examined on such a day; at first the committee worked together, but it was found necessary to divide it; two supervisors would take one claim; there were five or six on the committee; the claim of Farlee was numbered 2,008; there were about 3,000 in all; Thomas C. Field was counsel for the city; he did not act in all cases, he examined some important ones; Farlee appeared when his claim came up; Supervisor Blunt asked the questions, and I wrote down the testimony; Blunt conducted the examination exclusively on the part of the city; no counsel appeared for Farlee and none for the city; I knew Farlee was a lawyer; I think Blunt knew it; I knew he was the Mayor's son-in-law; I think Blunt knew it; this paper (containing the testimony of Farlee), was written by me; it is signed by Farlee, he said "I am the entire owner of the claim;" the committee always required the party presenting the claim to state that he was the owner: Opdyke was not examined; John W. Keene, was also examined, and this is his testimony, taken by me; I was careful to read over the testimony to the witnesses; I took more eare with this than any other claim, on account of its magnitude; when the claims were examined, the committee employed outside parties, insurance men, as appraisers, to examine them and report, and the commttee took their recommendations and acted upon them; it was not done in this case; I suppose Blunt knew more about guns than they did; the majority were so refined; I do not know whether this omission was by direction of Blunt; the claim was allowed, being indorsed $199.700, and signed by Purdy, Oct. 14; I was present when it came before the committee; I do not remember whether that of Wakeman came at the same time; I think Opdyke was present on Wakeman's claim, also that of Brooks, the clothing man, also a portion of the time on Farlee's claim; I think he voted on Wakeman's; I think the Comptroller and all the committee were present at Farlee's claim: there was a discussion; Blunt said that he had examined it, and he recommended it to pass; something was said about deduction—that every claim had been reduced, and this ought to be; I think Blunt stated that it was just, as it stood; after some discussion, I think Opdyke stated that he told Farlee to be very particular in making this claim out, and that it not being reduced would reflect censure on the committee, more than upon himself; that he had a great many political

enemies; though assuming it was indifferent to him, still it might reflect censure upon the committee; I do not recollect that anything was said about Farlee's being his son-in-law; the whole claim was $207.062,21; I think the Comptroller suggested that $1,000 should be taken off; some suggested different amounts; there were no particular items figured out; there was no computation, in fact; Purdy wrote out this allowance on the outside, and it was presented to the Board in the form given in the book now shown.

Cross-examined—I was not connected then with the District Attorney's office in August, 1863, nor with the Board of Supervisors, except in this way; I understand the Mayor and Comptroller to be members of the Committee, from the fact that they were sent for at the first meeting; the report of the Special Committee to audit the claim are all similar, except the first; I have no recollection of any other member of the committee sitting to hear the testimony in this case than Mr Blunt; I have never compared this printed report with my manuscript; I never saw it till last Friday; I recollect distinctly Farlee's saying he was the owner; I am positive he used the precise words, because I was particular to see that the witness so stated; I thought it proper to be done on account of assignments of claims.

Q. Was it not because you saw that the legal owner or representative of the claim should appear, so that when the claim was paid and the release obtained, all parties would be bound by it? A. That was the object; there were conversations between Farlee and Blunt; I do not recollect any at this particular stage of the examination; I put down the answers in the language of the witness; I cannot say whether he answered yes in this instance; he exhibited some documents; I cannot say whether more than one; something was exhibited in connection with a person by the name of Marston, I think; a purchase from him, I believe; I cannot recollect specifically any other paper; whether it is in the minutes I cannot recollect.

Q. Had you not seen in the papers, at the time, that Opdyke was called the owner of the factory? A. I had seen that; I knew also, where I lived, that it was called his armory; I think the committee had been in session from five minutes to an hour when Opdyke came in; they might have examined other claims; I do not recollect any reasons being stated for sending for him; I do not know whether he came when he was sent for at the first meeting; I do not know what "assembling of guns" means; I would turn to Blunt, and ask him, "Is this testimony?" I would tell him when he was going too fast; I understood his manner very well.

Q. Does this entry mean that the charge is $22.75, or that the workmen were paid at that? A. I can't tell; there is nothing to enable me to say what the meaning is, except as it is here; I do not know why the appraisers did not make an examination of this claim; I should say that Mr. Blunt was a gunmaker, and was supposed to know more about guns than the appraisers; it was the duty of the appraisers to visit the premises and see what special injury had been done; they did that in Mr. Wakeman's case.

Q. Do you think Mr. Opdyke voted on Mr. Wakeman's claim? A. That is my impression; I don't recollect what day that claim was passed upon; I think the Comptroller voted; he was opposed to certain items in the claim; my impression is, that when the discussion of this gun claim came up, Mr. Opdyke was sent for; Mr. Blunt said he was satisfied with the claim; I do not think there was any formal vote taken until the motion upon the amount which is audited there; I do not think Mr. Opdyke was there when the vote was taken; I think he left very soon after the suggestion I have mentioned; I have no recollection of his stating he had an interest in the claim; don't recollect that he said why he withdrew; my opinion was that he did not desire to vote on it, as he was connected directly or indirectly in interest in it, Mr. Farlee being his son-in-law; Mr. Opdyke said that he had a great many political and personal enemies, and that the fact of this claim not being reduced would reflect upon the committee; don't recollect his words, but my impression is, that it was not so much himself as the members of the committee he thought would be censured; I recollect the claim of a man who worked in this factory, for tools; I think Mr. Blunt then examined into the particulars of the destruction of the building; I don't know how long the investigation took of this Farlee claim; Mr. Blunt was occupied more than one evening: we sat an hour

and a half or two hours at a time; my impression is that the meetings on this claim were not consecutive.

Re-direct—It was the rule that claims should be verified by the owner, except where a party appeared by power of attorney; they were examined as to ownership, and what they paid for the property, and all about their claim; I resided in the neighborhood of the factory; can't say when I first heard of its being called Opdyke's armory.

TESTIMONY OF ELIJAH F. PURDY.

ELIJAH F. PURDY was sworn and examined by Mr. Evarts: Am one of the Supervisors of this county, and President of the Board; have been a member of that board since its organization, in its present form, in 1857; have been re-elected for second term of six years; was President for the first two years of the organization, and then two years elapsed before I was President again; have now been President for three years; the riot of 1863 was brought to the notice of the Board of Supervisors by a communication addressed to the board by the Comptroller, which, upon my motion, was referred to a select committee on August 7, 1863; resigned my place on the special committee October 20, but the resignation was not accepted, and I was requested to withdraw it; did not act with the committee after the 20th of October.

Q. When was the last meeting at which you acted? A. It was either at the meeting at which this claim was passed, or at the meeting at which Mr. Wakeman's claim was passed.

Q. Do you recollect whether both were present on the same day? A. I do not; my memory is not distinct; I was under the impression that both were acted upon at the same time; I requested Mr. Hutchings to keep a record of the proceedings, when claims of so important a character as this were passed upon; he informed me that he did, but they were mislaid or lost, taken out of the box.

Q. What is your impression, that they were passed on the same, or on different days? A. I am speaking exclusively of the action of the special committee which had their action in the room up stairs. My best impression is that these two claims were acted upon, but that one was not definitely settled, but reconsidered afterward.

Q. What part did you take in the examination or passage of this claim of George W. Field? A. None whatever; I mean in the examination of the evidence.

Q. When the evidence was completed, did you take any part in any discussion concerning the claim before the committee? A. I think I did.

Q. When was that? A. I think it was on the day of the certificate, Oct. 14, 1863, but I am not distinct upon that point.

Q. What occurred at that meeting which you were at, concerning that claim? A. Mr. Blunt reported the result of his examination; myself and my colleagues, I believe, equally confided in Mr. Blunt's judgment in relation to this matter; Mr. Blunt had this matter under his entire examination; I had great confidence in Mr. Blunt's judgment, his knowledge of guns, and the value of them, and I think it was on my suggestion that this whole matter was referred to Mr. Blunt to make the examination; he made a report allowing the full amount of claim; various propositions were made to reduce it, and I think I made the inquiry whether the person appointed by the committee to examine these claims, after we had closed one examination, were to make further examination, and inquire into the facts and circumstances, and see whether the amount could be reduced, and I think I was informed not.

Q. To whom do you refer? A. Frederick R. Ely, Richard A. Redding, the former President of an Insurance Company, and Mr. Lee had been, and Mr. Bridseye, who, I had also been informed, had formerly been connected with an Insurance Company; the others I knew myself, and I think I suggested their names myself.

Q. Was any inquiry made whether the city and county had been represented by counsel in this claim? A. No, sir; I think not; I do not recollect about that; Mr. Fields was appointed as legal adviser to the board, and Mr. Hutchings being a mem-

ber of the profession, I supposed that had been attended to; I presumed Mr. Hutchings would guard the city and county interests.

Q. Were you aware of the fact, that counsel had been appointed to represent the county in these claims generally? A. Certainly; Thomas C. Fields was to be the legal adviser of the board, and appointed by the committee.

Q. Did you know of Mr. Fields acting in various cases? A. Yes, sir.

Q. Did the question of striking off something from Farlee's claim come up, and what was said? A. I do not remember who made the proposition; I think I stated distinctly that I could not vote for it, in its present shape; it was suggested that all claims had better be passed on, on securing the sanction of all the members present; and it was assented to that a reduction should be made.

Q. Do you remember anything that was said or done by Mr. Opdyke about striking off? A. I do not; my memory has been somewhat refreshed by hearing the testimony of Mr. Hutchings; the Mayor at times attended, and the Comptroller; but I think Mr. Hutchings is mistaken as to their being members of the committee; the Board of Supervisors cannot go outside of their own body to appoint a committee; these gentlemen were sent for; we were exceedingly anxious to protect the city's interest, and to have these gentlemen to consult upon what was passed by the Board; the Mayor has the veto power, and can reject what is passed by the Board; I know these gentlemen did attend, and my own impression is, that they were invited to attend when we passed upon claims; they were much engaged and it was difficult to get them to attend.

Q. When this matter of striking off from his claim was discussed there, do you recollect what reasons were given why something should be stricken off? A. I do not; my impression is, that we had reduced other claims, and it might be said we were governed by partiality in passing a claim in which the Mayor's son-in-law was interested; I did not know anything about the justice of the claim, except what Mr. Blunt said.

Q. The connection of Mr. Farlee and the Mayor was known? A. I think Mr. Blunt said: "This is Mr. Mayor's son-in-law;" it was known to me.

Q. What was finally determined on? A. They reduced it from Mr. Blunt's report, $207,000—$199,700. If my memory serves me, there were several propositions made; the proposition to reduce it to this sum seemed to meet the favor of most of the members.

Q. There was no computation of any particular items? A. Not within my recollection.

Q. Was this subject of its not being passed before these five insurance men otherwise spoken of than as you have stated? A. I do not recollect its being discussed; there was no discussion; I did not vote on the question; the claim was reported on 20th October, on which day I resigned; my impression is that the Comptroller proposed one reduction and Mr. Ely another.

Cross-examination by Mr. Emott.—You stated that your recollection was that Mr. Opdyke was sent for to attend the proceedings of the Committee, or that he was invited to be present?

Mr. Evarts—Not at that meeting.

Witness—It may be that it was.

Mr. Emott—What is your recollection about it; was he not invited to attend the meeting? A. I cannot say now; I know I was anxious that the Mayor and Comptroller should both be there; think the proposition that they should be invited to be present was mine, though my memory is not distinct on that point.

Q. Did you know of your own knowledge that Opdyke was directly or indirectly interested in that claim? A. I recollect Mr. Blunt saying that the claimant, Farlee, was the Mayor's son-in-law.

Q. Did you understand that the Mayor had a pecuniary interest in it? A. I heard he had advanced money to the business, but I don't know what his interest in the matter was.

Q. You had previously some conversation with Mr. Opdyke about the claim? A. Yes, I think I had.

Q. That is about its being such and such a claim? A. Yes, I think I had.

Q. How often did you see the Mayor at the meeting of the committee? A. Not very often.

Q. Was he not specially invited there on those occasions when you saw him present? A. I think he was; I cannot recollect distinctly now.

Q. Did you not propose to see him, particularly because you were informed that he had an interest in this particular claim? A. That may have been the case; my recollection with regard to sending for him and the Comptroller is not very distinct, except when it first came up for consultation, I was very anxious that these gentlemen should be present.

Q. That was some time before it was passed upon. How long had the committee been in session? A. They met in August, immediately after its appointment.

Q. And you held meetings every day? A. Not every day.

Q. Did you not get your impression of Mr. Opdyke's interest in the matter by his advancing, or was it from your conversation with him? A. I think so, and from my conversation with Mr. Blunt.

Q. You say that no computation was made of the terms? A. Not to my recollection.

Q. You had entire confidence in Mr. Blunt as to the manner he investigated and allowed the claim? A. I had.

Q. Therefore the reduction proposed had to be made in a gross sum? A. I don't know what motives prompted others.

Q. There was a question about $200,000; do you say that sum was not named by the Comptroller? A. The original sum was $200,700.

Q. You do not mean to say that the Comptroller made particular allusion to the other sum, but merely to reduce this original amount? A. I don't know who made the special proposition to reduce, but the question to reduce was discussed in the committee.

Q. Was that all? A. Various amounts were proposed; one gentleman proposed one amount, one another.

Q. But no one spoke of the $200,700 as of any particular or special importance, except that that was the sum reported by Mr. Blunt as due to the claimant? A. I don't think so.

Q. And that sum was not expressly referred to? A. I think not.

Q. Except by Mr. Blunt himself? A. Yes.

Q. In the propositions to receive it, was there anything said about so large a sum going before the public? A. There might have been.

By the Court—Was there any mention made or reference to that precise figure? A. I cannot say that was the precise sum. I could hardly recollect one sum, where claims were for millions.

Q. You were present at the meeting of the committee that day, although you declined affirmatively to sign the vote? A. Yes, when the claim came to pass the sub-committee.

Q. State whether Mr. Opdyke did not withdraw before the vote was taken on the claim? A. Certainly he did. I saw him leave his seat, go round the room, and supposed he left.

Q. What reason did he give for leaving? A. My impression is that he said: "Gentlemen, you know my relationship to this claim, and it would be indelicate for me to act or be present while you are considering it." Now, that is my impression, though I cannot recollect distinctly.

Q. Did he not decline distinctly to take any part or action in the committee? A. He must have declined, for he left the room.

By the Court—He was not a member of that committee, as I understand it.

Witness—He was not a member of the committee; we had no right to go outside of the Board of Supervisors for a member.

The Court—When he came in on any of these occasions did he come to or with the committee, or did he take any direction in the action of the committee? I recollect distinctly that he did in one case vote for a claim.

Q. Did he merely advise, or did he vote? He voted.

Q. Was his vote recorded? A. I told Mr. Hutchings to record the vote; I have a memorandum of the votes that were given on that claim.

Q. Do you recollect what that claim was? A. ———

Q. Do you think he voted on Wakeman's claim? A. He did.

Q. Did you raise the question of his right to vote? A. I think not.

Q. Do you recollect the vote on that claim? A. Very nearly.

Q. Was there a majority of the vote in favor of the claim on that vote? A. No.

Q. What was the vote in favor of the claim? A. Orison Blunt and the Mayor.

Q. Against it? A. The Comptroller, Ely, and Purdy.

Q. And you think that neither the Mayor or Comptroller had a right to vote? A. I have not said so.

Q. Do you say so now? A. It is a matter of opinion; my opinion is that they were not members of the committee, they were merely invited there.

Q. By the Court—Was the Mayor in the habit of acting on the committee? A. He came there often.

The Court—And acted with the committee? A. Yes; but not to vote?

Q. Did he vote on any other occasion? A. I think not, and that was my reason for telling Mr. Hutchings to record his vote, and make a memorandum of it on that occasion.

Q. Did he sign the reports? A. No.

Q. Did he ever attend the meetings of the Board of Supervisors as a member? A. No; but I think I recommended that both the Comptroller and the Mayor should be invited as I conceived their advice would be beneficial, as I believe the city might otherwise be subjected to loss; I thought his presence beneficial not only in this matter but in the matter of volunteering.

Q. Was there counsel present, to advise the committee? A. No; I did not say that.

Q. Was not Mr. Opdyke's conduct with reference to the claim highly honorable? A. I saw nothing in his conduct to censure.

Q. With regard to the claim of Wakeman? A. I saw nothing in the Mayor's conduct to censure in any respect.

Q. How did his conduct strike you in regard to this claim of Wakeman? A. I saw nothing to censure in his conduct.

Redirect by Mr. Evarts—Q. The committee, from the commencement of its organization, invited, or in some way acquired the co-operation of the Comptroller and Mayor? A. I thought their presence advisable in order to facilitate the business, and that no delay might occur to cause suits against the city; the veto power existing in the Mayor, claims might be paid and my advice acted on.

Q. And the gentlemen came there often and sat with the committee? A. I cannot say how often they were there; I know they came there.

Q. You say that you knew of the relationship of Mr. Farlee, the claimant with the Mayor? A. Not of my own knowledge; I knew nothing about it, but was informed of it.

Q. You were informed that Farlee was son-in-law to the Mayor? A. Yes; my first information on that subject came from Mr. Blunt.

Q. You were first informed of it in connection with this claim, and before the claim came up before you? A. No.

Q. But for being so informed, would you have known of any connection existing between Farlee and the Mayor? A. I think not.

Q. You said something having heard that Opdyke made advances to Farlee in connection with this business; who did you hear that from? I think I heard it from the Mayor himself; my interview with the Mayor had had not been of the most friendly character; previous to that I had some business at the Mayor's office, but whether he sent for me, or whether I went myself, on official business, I don't now recollect; I think some conversation then took place, but I cannot speak distinctly about it; Mr. Blunt, I know it was, who informed me that Farlee was the Mayor's son-in-law.

Q. Do you know of any other interest the Mayor had in this matter, beyond the interest he might have in his son-in-law? A. I can't say.

Q. Who was the claimant, of your own knowledge? A. I don't know; I never looked into the claim at all.

Q. Did you ever hear it stated before that committee, at any time, that Opdyke had any other interest in the claim than as the father-in-law of Farlee? A. Not before the committee; the committee merely discussed the various claims as they came before it, and as reported by the sub-committee.

Q. Did you ever hear it stated in that committee, or in the presence of any member of that committee, that Opdyke was otherwise connected with this claim than that Farlee was his son-in-law? A. I don't think I did; but I cannot say distinctly; I do not wish to be understood except as speaking from my own knowledge merely.

Q. You had heard from Mr. Blunt, or from the Mayor, about advances. Did you know of your own knowledge that advances had been made by the Mayor?

THE COURT—He says he had not.

Q. Can you state if any communication was made to you whether there had been any advances made before the passage of this resolution or claim? A. I do not know that I had, although I wish to be understood distinctly that my recollection is not perfect.

Q. Did you ever hear the amount, in dollars and cents, of any interest, by way of advances or otherwise, by Opdyke, in the claim before it was passed? A. No, sir.

Q. Did you, at the time the claim was passed—claim of $200,700 then reduced to $199,700—know anything of the terms or the principle on which the claim was made up? A. Nothing whatever.

Q. Was there any statement before the committee when passing the claim, respecting the items or principle on which the claim was made up A. Not to my knowledge.

Q. You never read the evidence in support of the claim? A. I never saw the printed book.

Q. Was the evidence read before the committee at all? No, I believe not; I don't recollect distinctly now.

Q. You stated, in answer to a question, that at the time this occurred you saw nothing in the Mayor's conduct to censure? A. Nothing on that occasion.

Q. And you say you knew nothing of the principle on which the account was made up? A. Nothing whatever.

Q. You knew nothing of the Mayor's pecuniary interest in it? A. Nothing whatever.

Q. Was not the Mayor auditor of the claim by the charter? A. That charter has nothing to do with the Board of Supervisors; the Board is allowed by law to admit and allow claims; the Mayor approves the ordinance; then it is sent to the Comptroller, who, by law, has authority to reduce the claim, but none to add to it.

Q. Then the application came from the Comptroller to the Supervisors that they should act—not from the Supervisors to the Comptroller? A. Not at all; the Comptroller sends a communication, with the various claims and losses which he thinks advisable should be acted upon by the Board of Supervisors; I made the motion to that effect, and it was referred to the select committee of the Board, and that committee has acted ever since.

Re-examined by Ex-Judge Emott.—Q. Did I understand you to say that you had no information, previous to the time when this claim came before the committee of the Board of Supervisors, that Opdyke was concerned or interested by advances of money or otherwise in it? A. I did not say that.

Q. In the conversation you had with the Mayor, did he not allude to having a large interest in the claim, or that he had advanced a large sum of money on it, and that he could not wait, or that it would be inconvenient for him to wait, or something to that effect, going to show that he had a large interest in it? A. My communication or conversation with the Mayor was very limited for nearly a year and a half; after that we became more intimate, and when he sent in his communication to the Board of Supervisors, I generally replied to them; I cannot say that our intercourse was of a very friendly character until within some six months of the close of his term of office.

THE COURT.—You are asked if you did not learn of this interest of the Mayor's from the Mayor himself? A. My impression is that I did, but I cannot say definitely that I did, as I do not now recollect all the particulars.

Q. Did he say anything with reference to the action of the Board, or of the committee, that they should well consider the particular claim? A. It may be that he did; I wished to consider the small claims first, so that we might establish a principle when we came to pass on the larger claims.

A. In that connection did not Mr. Opdyke in conversation with you speak of this claim coming on, and express the desire that it should be acted on as promptly as justice to the other claimants would permit, on account of his large interest in it? A. We had a conversation with regard to it, but the precise nature of that conversation I do not now recollect.

Q. State the substance of it. A. From what he said to me I understood that he had made advances on it, although even as to that I cannot swear positively.

Q. Did he not speak of it as a large interest, or of the largeness of his interest in the claim? A. He might, and yet I cannot say that he did.

Q. With regard to the ownership of claims, was it customary to discuss that question in the committee, or did they confine themselves merely to the discussion of the amount to be allowed? A. The first question entertained by the committee was in reference to the rightful ownership of the property.

Q. Was there anything said abont the ownership of this claim when its merits were discussed with reference to the ownership of it, and the amount that should be allowed? A. I don't recollect now what occurred in the passage of the claim; I was somewhat excited at the time, as I did not like the way the claim was carried through.

Q. Did not Mr. Opdyke distinctly give the Supervisors to understand that he withdrew from the committee on account of his interest in the claim? A. Whether it was on account of his own interest in it, or on account of his relationship to Farley, I cannot say.

Q. With regard to the Wakeman claim, don't you recollect that after it was passed at a certain amount that it was reduced and he refused to take it, and that subsequently a larger amount was obtained? A. We passed the claim reduced by several thousand dollars; the claim was then reconsidered; I was not present then, and when I found it out, I recollect distinctly asking the Comptroller.

By the Court—You were asked whether Wakeman did not refuse to accept the reduced sum? A. I was so informed.

Q. And the case was reconsidered? A. Yes, and it was afterwards increased.

EXAMINATION OF SMITH ELY, JR.

Smith Ely, Jr., examined by Mr. Evarts—Was a member of the Board of Supervisors; recollected the claim of G. W. Field being before the committee; that case was under investigation with regard to the other claim; I recollect the witnesses being under examination by Mr. Blunt.

Did you take any part in conducting or hearing the examination? A. I took no part, except that I sometimes listened to the evidence; I did not know except by general report, that the claimant, Farlee, was the son in-law of the Mayor; I was not present at the consideration of the claim until the next day it was passed; the matter came before us on the recommendation of Mr. Blunt; it was I who proposed to reduce the amount of the claim to $199,700; the Mayor was present when the Wakeman claim was discussed, and he wished that the claim of Farlee should go through the same vigorous ordeal; the claim rested principally, as to its rectitude on the recommendation of Mr. Blunt.

The witness was not cross-examined, and the court adjourned until 10 o'clock next day.

SIXTH DAY.

TUESDAY, DECEMBER 20TH, 1864.

TESTIMONY OF JOHN KEYSER.

John Keyser, sworn. Examined by counsel for defendant. In 1861 I was on the Republican Central Committee; its duties were to collect moneys, distribute them, order elections for delegates under the jurisdiction of the State Central Committee; no money was collected from the Custom-house in 1861, for the State election, with the exception of one or two individuals; for the Mayoralty election we received $3,000.

Q. What was said and done by Opdyke? A. I went to Opdyke about the $3,000; I said it was necessary to have that, as they had not raised the money in the Custom-house; to pass it over, and if he would give me his check for $2,000, I would advance $1,000 on his personal guarantee, if they did not pass the $3,000; he agreed to that; shortly after the election, Opdyke came to my office—I was then Registrar—and told me that Barney refused to give him that check for $3,000, without my indorsement or receipt; I told him that made no difference, I would indorse it over to him; he then remarked that he did not ask Barney for any receipt when he went his security as Collector: a young man brought the checks to me, and I indorsed them to Opdyke, and called on him and got his check for the $1,000 that was to come to me; there were two or three checks from the Custom-house, amounting to the $3,000.

Cross-examined. The money was all paid after the election from the Custom-house; the $3,000 check might have been given a day or two before the election, or a day or two after; it strikes me it was after I got the $1,000, as Opdyke's assessment as candidate for the Mayor; the $2,000 was in anticipation of money that was to come from the Custom-house; it was appropriated, but they had not made the collection appropriated for the Mayoralty election, or Charter election; there were few officers run, and the candidate for Mayor was to go to more expense than any other; the Charter election is not always the most expensive; I was told that no money for the State election had been collected; none came into my hands; the expenses of the State election are partly paid over by the State Committee; there was no Governor election, we thought there was occasion for collections, and made up heavy collections for the country; Dickinson ran for the Secretary of the State; the County Committee assessed themselves to get money enough to print tickets; we got no outside help scarcely.

Re-direct. There was another committee called the People's Union, and other committees that I don't remember; Dr. Bradford was chairman of the People's Union, and after Mr. Williamson; I think Churchill was chairman of the Citizen's Committee to aid Opdyke's election.

TESTIMONY OF HIRAM BARNEY.

HIRAM BARNEY, sworn. Examined by counsel for defendant. In 1861 I was Collector for the Port of New York; Opdyke ran for Mayor; Gunther and Wood were the other candidates; a meeting of the citizens was held on the 26th or 29th of November, and they appointed a committee, of which T. G. Churchill was chairman, to promote the election of Opdyke; I received and applied the money collected at the Custom-house; on the 5th of December, I drew a check payable to the order of Keyser, Treasurer, for $3,000 for the use of the Central Republican Committee; and on the same day a check for $5,000 to the order of Churchill, Treasurer; I sent the first to Keyser, and delivered the second; Opdyke called on me about the money; he stated that he had made large advances to the committees for the purposes of election, and desired to know how much would be received from the Custom-house; either then or subsequently, he requested that I should pay the moneys to him; I stated that they were raised for the purposes of the committees, and I thought it was proper the checks should be drawn to them and they should see about the application, and they were so drawn.

Q. What did he say to that? A. I don't recollect what he said in reply; perhaps, to repeat what he had previously said, that he had made the advances and the money properly came to him; no money was raised for the State election, on the 6th of January; I paid the balance of the money raised, $1,482 52, to Churchill, as treasurer; I drew all the checks in that way—to the order of the treasurers; I think I had only one interview with Opdyke between the election and the last payment.

Q. How happened you to pay the $1,482 afterwards? A. I understood that the expenses incurred by the committee were large, and that all the money not needed by the Central Committee would be properly applicable to these expenses; the Churchill committee had nothing to do with State affairs.

Q. Were the officers and clerks of the Custom-house requested to pay the money? A. When it was proposed to make a collection, as usual, I issued a printed circular; the substance of it was this: That it was usual to make annual contributions by the officers and clerks for purposes of election; that they had not had an opportunity of making any contributions that year, and that opportunity would now be afforded to contribute what they would do voluntarily; that no coercion would be used; that no officer or clerk would either have any claim for retention on account of contributions, nor would be liable to any disabilities or dismissals on account of refusal; that the contributions must be voluntary; and that I would undertake to see to the application of the moneys; they did not all pay; a large number did not.

Q. Did you state that it was customary to make contributions from the Custom-house for the Mayoralty election? A. I did not.

Q. You knew that it was not customary? A. I did not.

Q. Didn't you know there was not an instance of it on record? A. I did not.

Q. Did you know there was? A. I did not.

Q. Had you ever known an instance before where Federal officers had passed over the State election and had been called on for the Mayoralty election? A. I did not; I never knew an instance of a State election occurring in that condition of the country in which we were then.

Cross-examined by Mr. Emott—Q. What was the condition of things to which you refer? A. The condition of civil war—the commencement of the year; that was the first year of his being in the Custom-house; Mr. Opdyke and I have been on very confidential relations; I can't state whether the money was paid before or after the election; I have stated when it was paid; the election was the first Tuesday in December; I paid over the proceeds of all the money collected, in one check to Keyser and two checks to Churchill; not a dollar went directly to Opdyke; I paid over the whole amount, less expenses, or commissions for collecting.

Re-direct by Mr. Pierrepont—Q. Before the commissions were taken off, how much did it amount to? A. I cannot tell; I was intimate with Mr. Opdyke at that time.

Q. Had Mr. Opdyke made a good many appointments in your office? A. No, sir.

TESTIMONY OF GILBERT G. YOUNG.

GILBERT G. YOUNG, sworn. Examined by Mr. Pierrepont. In October, November, and December, 1861, I was employed in the New York Custom-house; I know Mr. Palmer; he was private secretary to Mr. Barney; that is, appointing clerk.

Q. State what you did, and who requested you to do it, in relation to raising money in the Custom-house for Mayor Opdyke's election; state what was said by Mr. Andrews or Mr. Opdyke, or both? A. About twelve days prior to the election, I received a notice from the private secretary, Mr. Palmer, to report; on reporting there, the question was put to me whether I was in favor of Mr. Opdyke's election; I answered that I was, as he had the nomination; the remark was made that "Mr. Weed caused your appointment;" I said I remembered that; said he, "I want you to have leave of absence for about twelve days from duty;" I was then ordered to go up into the Seventh and Seventeenth Wards for the benefit of Mr. Opdyke, having been introduced to him in Palmer's office, and there see what Mr. Weed was doing through the police department to defeat Mr. Opdyke, if anything; Mr. Palmer gave my orders in the presence of Mr. Opdyke; no money was given me at that time.

Q. Did Mr. Opdyke, or Andrews give you any money? A. Mr. Andrews did on the morning of election day.

Q. What had you to do about raising the money? A. Nothing to do about raising the money, except to notify parties who had not paid to come up and settle; I did notify them; some came up; they were Custom-House officers I notified.

TESTIMONY OF HENRY D. STOVER.

HENRY D. STOVER, sworn. Examined by Mr. Pierrepont. I have been in the machine business for eighteen years, and have been a manufacturer and dealer in all kinds of machinery, metals, &c.; I know Mr. Marston.

Q. Who furnished the machinery to Mr. Marston for this armory that was burned? A. I furnished about sixteen engine lathes, I think, and quite a number of milling machines, and the shafting, I think, for the entire building; I was in the building a good many times; I understood all about its arrangement; I knew about its being destroyed.

Q. Have you examined into the machinery, and into the account furnished by Mr. Farlee to the city? A. I have; the items I furnished are nearly all here: there are some items in this account that I made a partial bargain to furnish, and did not do it; I furnished the following: 2 milling machines at $275 each, $550—charged here $598; 1 milling machine at $275—charged here $279; 1 milling machine at $275—charged here $303; 1 milling machine at $275—charged here $287; 1 milling machine at $275—charged here $279; 1 milling machine at $275—charged here $299; 1 engine lathe at $210—charged here $255; 2 engine lathes at $190 each, $380—charged here $450; 7 engine lathes at $165 each—charged here $175 each; 2 engine lathes at $185 each, $370—charged here $430; 1 large planer jaws at $300—charged here $375; the next item is all the main shafting in first, second, and third floors and basement stories, except rolling-mill, including pulleys and hangers, sold at $646.20, and charged here at $1,681.16; I sold 10 milling machines, all at $275 each.

Q. How as to this item of stocking machinery, patterns, &c., $9,669? A. Mr. Marston and I talked a good deal about this stocking machinery, as I was about building some for other places—for long stocks; these were to be carbine stocks, not half the length of the Springfield gun, and only required half the machinery; I agreed to build the full stock for $3,000, for which the charge here is $9,669; I did not furnish it; $3,000 was its fair value, and I would have furnished it for that; but he thought he could get it done

for less; I do not think that what I named is all I furnished, but it is all I can point out without going to my book.

Q. Have you the list of articles you furnished Marston? A. I have; I supplied 1 engine lathe, 5 feet bed, at $205. 1 engine lathe, 7 feet bed, at $210; 1 milling machine, at $275; 2,520 lbs. two-inch shafting, hangings and pulleys, at 10 cts. per lb.; 1 engine lathe, 6 ft. bed, at $252; 1 upright drill at $125.

Q. Is this shafting for which $646 is charged, the same which you supplied? A. Yes, sir; it would be impossible for me or any other man, to explain this printed inventory, as it is different from any I have ever seen in the machine line; here is an engine lathe put down at 4 feet bed; it should be 4 feet 6 inches; I furnished [witness went on to state a list of articles furnished by him, and the prices.]

Q. At the time you sold these articles to Mr. Marston, at the prices named, was from October, 1861 to March, 1862. If this machinery continued in use down to the 13th of July, 1863, when the fire occurred, what would you say as to its being worth more or less than what you sold it for? A. Why, less, certainly.

Q. How much less than when you sold it? A. You could not sell it for more than two-thirds; that is the general rule for machinery that has been used, two-thirds to three-fourths.

Q. Did you ever hear the theory that machinery is more valuable when used a short time? A. I never heard that; I would not buy it back for more than two-thirds of what was paid for it.

Q. To what does this rule of diminution in value apply? A. It applies for all in this inventory, for it was all used, I believe.

Q. Tell us the truth about machinery having risen in value up to the time of the fire? A. I made no difference in price; I sold the same articles at the same price; I never charged more than $275 for milling machines, and I think mine were the best in the factory; on 13th July, 1863, we had not raised our prices; we kept from 500 to 700 men employed; our tool establishment is at Worcester, Mass.; our heavy machine work is done at foot of Twenty third street—the Stover Machine Co.

Q. You have looked through the bill of items to examine the prices; tell the Jury what you find to be the truth about the prices charged in this inventory, compared with what was the true price at the time? A. I think I will compare them with our catalogue of prices; I find three four-spindled drill presses charged at $225, worth $150; one three-spindled drill press charged at $155, worth $130; one one-spindled drill press charged at $175, worth $150; one engine lathe charged $325, worth $216; putting up and adjusting counter shafting for sixty-five machines, charged at $1,495; $8 a piece would be a large price, more than it ever cost me to put them up; $4 50 would be enough; wrought anvils at 13c. per lb., 1,263 lbs., worth 10c. per lb.; 484 lbs. cast anvils at 10c. per lb., worth 7c. per lb.; one milling machine, charged at $345, worth $275; two milling machines, each $315, worth $275; one small milling machine, charged $175, worth $150.

Q. Twenty-nine tool hands, from December, 1862, to July 13. 1863—average pay $19 25 per week, or $558 25 for thirty- two weeks—$17,864; what do you say as to that charge? A. One man is enough to make tools for 300 men after the shop is running; that would be two men for 600, instead of 29; and two men for thirty-two weeks would be $1,052, instead of $17,864.

Q. Had you been through this manufactory? A. I have some dozen or fifteen times; Haines Brothers had the place and Marston succeeded them, and while the main shafting was being put up I was there almost every morning; I went frequently to collect money, and Marston good naturedly would take me through; that would draw my attention from the account I wanted to collect; the last time was about May, 1863; I had a general idea of what was in the building; I bought a similar concern in Worcester for $33,000, with more machinery in it and all the stock on hand in 1861.

Q. What is your estimate of the value of this machinery, tools, fixtures, &c., at the time of the fire—everything except the guns? A. I should not have wanted to pay $33,000 myself, for it; that would be the full value I should think; it would be necessary to make as much outlay to build 1,000 as 100,000—that is the different kinds of machinery, not the number; on a contract of 6,000 or 10,000 guns there would be a very great loss; hardly a man would want a contract short of 25,000 to 40,000 to start with; it would cost probably as much for the first 1,000 as for the next 3,000 or 4,000, and after 10,000 or 20,000 it would not cost but very little more; the expense is in starting with the tools and machinery.

Cross-examined—I live in West Twenty-second street; I manufacture and deal in all kinds of machinery and metals, and railroad supplies I never made small guns, only 6 and 9-inch cannon for the Navy-yard; I made musket stocks for several concerns in the outset of the war, and patterns to forge by, also machinery for making stocks and different parts of the gun; I never spoke to the defendant till three or four days ago; he never did anything for me.

Q. Were you in considerable trouble some time ago? A. That is my business.

Q. Were you not sent to Fort Lafayette? A. Yes, sir.

Q On a charge of mixing lead with tin? A. No sir. I was sent there on suspicion last February; I remained till the 4th of July; I was charged by a Clerk in the Boston Navy-yard with attempting to bribe him; I was arrested in Washington; I had a trial in Philadelphia by court-martial; the clerk was the only witness against me, and I was acquitted; it was nothing about mixing up lead with tin—you have got another man mixed up with me; I do not know who; the clerk was paid $500 for making the charge, as has since been proved; since I have been out I have been at my store in Liberty street, a machinery depot; I do not know how I came to be a witness; I am frequently in the room of S. S. Roland, a lawyer, and he was telling me about this case; I would like to tell what he said; I was subpœnaed regularly.

Q. Are all milling machines of the same size? A. They are generally two sizes, they might vary a half an inch; all do not ask the same price; the highest I ever asked was $275; I do not remember the highest I ever heard; others generally charged less than I; I do not know whether any charged much higher; I do not pretend to tell what the cost of their machinery was; I could not tell whether the machines charged $598 or $550 were furnished by me; I sold ten at $275 each; I supposed I furnished all the main shafting, for $646—charged $1,680—all there was in the building was not worth $646 in my judgment; I say only two tool hands would be required for that number of workmen whatever material is required; tools are the same in a gun factory or a machine shop, and require no more labor and attention.

Q. Was there not a general increase in value from December 1861 to July 1863? A. there was some slight increase of stock, there is a very large increase since commencing about July; the slight rise before did not affect shops that had a year's stock on hand; everybody stopped buying for about a year; I mean to say that this machinery which was charged $97,000 was not worth more than $33,000 for any purpose; I thought some of the carbines were very poor; I don't think a man would dare to shoot them; I would not give two cents for some of them that were burned, from what I have heard; the machinery was worth more for making carbines, but not worth more than $33,900 for that; one company sold out all their tools for $450; they could be worked over into other tools; they are not much account when you sell out; I had a contract to furnish the machinery for making the stock of the Norwich Arms Company for $7,000 which I partly completed; I made two sets for myself, and they cost inside of $7,000.

Redirect—What I said about the guns being good for nothing, was from hearsay; I understood the barrels were very imperfect; the first lot of experimental guns were comparatively worthless; to those my remarks applied more especially, and not to all that were unfinished; the first person who called upon me to testify in reference to this suit, was Smith, from Marshal Murray's office; he suspended me; I have conversed since the trial came on with the counsel only and my chief clerk; I have furnished the Government with a large amount of machinery and continue to do so.

Q. Now tell all about the Fort Lafayette matter. Witness here narrated a long story commencing with jealousy on the part of Smith Brothers, of Boston, in the matter of furnishing materials to the navy-yard there; hearing of their threats to run the witness off, he suspected one Jacobs, a clerk in the Navy-yard, was in complicity with them; Jacobs suggested to the witness in furnishing materials to give it under weight, and upon being questioned stated that Smith Brothers had done the same; so witness apparently acquiesced, at the same time informing the officers of the fact; accordingly the first 40,000 pounds of copper were delivered by Jacobs at 40,390 pounds, but Jacobs suspecting the trap was not caught with the second delivery; then Smith Brothers, as witness learned from good authority, paid Jacobs $500 to swear that witness had attempted to bribe him; upon this the witness was arrested and sent to Fort Lafayette, where he had a good time—never had better in his life; there were foreign ministers, Major-Generals, many notorious characters, and a good many lawyers there [laughter]; but when the Government began to investigate the affairs of Smith Brothers and others, witness thought they found that he (witness) was about the only honest contractor in this country; and when he left Washington, Secretary Welles said: I am very happy to shake you by the hand again; you must not think I had any personal feeling against you, but we had to commence with some one, and it might as well be you as anybody; I am very happy to say to you now that I believe there was no foundation for the proceedings taken against you; in fact, the Judge-Advocate has written to me to that effect; Smith Brothers, the witness further testified, had been convicted, and if they got less than ten years he would be disappointed.

TESTIMONY OF LUCIUS H. GIBBS.

Lucius H. Gibbs, sworn. Examined by counsel for Defendant. I reside in Brooklyn; I am the inventor of the Gibbs's patent carbine; I was engaged in the armory in question to see that the gun was properly got up; I saw the factory burning; I have tinkered

with pistols and guns over 20 years, not all the time; I was familiar with the machinery in this factory; I was in only occasionally after Superintendent Keene came in; Keene showed me the bill to the city; I did not examine it at all; afterward I saw the notice of the payment of it.

Q. Did you say that in the claim submitted to the Supervisors, on which there was $196,000 paid, there was a large swindle? (Objected to, as no justification of the libel.)

MR. PIERREPONT—The words of the libel are: "Gibbs, the carbine patentee, says that in the claim submitted to the Supervisors, on which $190,000 was paid, there is a large swindle."

THE COURT—I think they have a right to prove that he said so. It is not necessary for me to rule that it is justification now; that is another question. I know no authority that will exclude it. It would be a very different thing if it was all fabricated from what it would taking the libel published precisely as is now with the fact proved that Gibbs never said so.

MR. EMOTT—Could we call Gibbs to prove he never said so?

THE COURT—Undoubtedly. It is evidence in mitigation. I will not rule whether it shall go beyond that. I charge the Jury upon the effect of it.

Counsel for plaintiffs excepted.

WITNESS—I said so to a number of different individuals; I told Farlee so in his office; I did not use the same language. (Objected to and ruled out. It must be in the same language.)

Q. State whether you gave any reason for the account being a swindle. (Objected to, ruled out, and withdrawn.)

TESTIMONY OF HAMILTON HARRIS.

HAMILTON HARRIS, sworn. I am a lawyer of the city of Albany; have been practising since 1846; I am brother of Senator Harris; (copy of *The Albany Statesman* shown, dated October 12, 1863, containing a letter from Opdyke to Ira Harris, dated September 25, 1863) I saw the original letter here published; I believe it was in the handwriting of the plaintiff; it was sent to my brother with a request that it should be inserted in *The Evening Journal*, which had contained some letters of the defendant, and if they refused to publish it, then it should be taken to *The Statesman*; I did the errand for Opdyke in the place of my brother; I took the letter to the *The Journal;* Mr. Dawson not wishing to publish it, I took it to the *The Standard and Statesman.*

Q. Have you the letter requesting its publication? A. It is marked private, and was not written to me, therefore I do not know that I have any authority to produce it; (the letter was, however, produced and identified,) I have looked for the original published letter, but have not been able to find it; I presume it is not in existence, being left with the publisher.

Cross-examined. Q. Were the two letters now shown you written by your brother, (one dated Sept. 17, 1863, and the other Oct. 3, 1863, addressed by Ira Harris to the plaintiff)? A. They are in his hand-writing.

MR. EVARTS—You don't offer them in evidence?

MR. FIELD—We shall offer them.

MR. EVARTS—I now offer to read the letter published in *The Statesman*, the original having been proved to be lost.

MR. FIELD—The loss is sufficiently proved. I utter no secret when I state that in the opening of the counsel for the defendant, the letter now offered was read verbatim, and that the counsel took occasion to state in emphatic terms that it began with a lie. I have now two letters from Ira Harris showing that it was true. Now, we shall not object to the introduction of the letter the counsel have offered if we are allowed to prove that every word of it is true, and that it was written in consequence of a previous attack in the public prints by the defendant, Weed.

MR. EVARTS—Do you object as it is?

MR. FIELD—I do not say.

MR. EVARTS—I wait to understand whether the learned counsel objects.

MR. EMOTT—The Court understands us.

MR. FIELD—We object, but we will waive our objection if they consent that we may prove the letter to be true.

Mr. EMOTT then proceeded to argue against the admissibility of the letter from Opdyke to Harris. He said it could be important only in connection with the strange charge in the counsel's opening that it was a trick—that its publication was procured for the purpose of making a malicious attack on the defendant, and that its statement concerning a previous letter from Senator Harris was false.

MR. EVARTS—It is offered as a letter of Mr. Opdyke's.

MR. EMOTT—It has nothing to do with the case unless it bears upon the issue, and it is only on the ground of provocation to the libel that it is relevant. Counsel then cited authorities against its admissibility, and among others the case of Gould agst. Thurlow

Weed, 12 Wendell, where it was held that the publication must be so recent that it could be supposed to be made under the impulse of passion.

Mr. EVARTS urged the admission of the letter, as the letter of Mr. Opdyke, distinct from the part of its publication. The letter was dated, Sept. 25, 1863, the Commissioner on Claims was appointed in August; Mr. Farlee's claim was presented, Sept. 9, 1863, and not disposed of until October, 1863. It was part of the libelous charge that Mr. Weed said that while the claim of loss on the contract in question for making guns was being entertained before the Committee, Mr. Opdyke was holding the ground, publicly and privately, that he had no relation or connection with government contracts. This letter, under Mr. Opdyke's hand—his own statement, published voluntarily, showed that he held that ground; for he explicitly says, "Equally groundless is the charge against me of of being engaged with Government contracts. * * I have no Government contracts, nor have I any business connection with the Government, of any kind, direct or indirect.

Counsel also urged its admission as going to mitigate damages, and, in the third place, to show provocation. The attitude of the plaintiff in this letter was that of a newspaper pugilist, and being worsted in that encounter the law would not encourage his coming into court, and obtaining satisfaction there.

Mr. FIELD replied to the grounds put forward by Mr. Evarts. How could the declaration of Mr. Opdyke in September, 1863, that he had no Government contract (which was true, for after the burning down of the Armory on 13th July, the contract ceased, and he had no further connection with or interest in any government contract) tend in any way to justify the libel? If they first proved that Mr. Opdyke had any contract, then it might be in order to offer his letter, stating he had not. Then, on the question of provocation, this letter was called out by a prior malignant attack of the defendant on Mr. Opdyke and his son; and had it come to this, that a party could not deny aspersions on his character, and then come into court and punish the libeller? If this case proved anything, it would prove whether a man who had a press could libel any citizen at his will, or whether there was any remedy. He believed that when a man departed from his great office of being the conductor of the public press to the base purposes of private slander he could be punished effectually.

JUDGE MASON said that he was very clear in his convictions that this letter could not be given in evidence for the purpose of laying the foundation to show provocation. The letter was dated 25th of September, '63: the alleged libel was written in June, 1864; to be admissible as showing provocation, it must appear that the article complained of was written under the sting of this letter; but it was too remote; Mr. Weed's blood would have had time to cool. The remaining question was whether it was admissible to show Mr. Opdyke's admission of any fact set up as a defense. He did not think it was an admission of anything which the defendaut claimed. It might be evidence after the defendant had shown that Mr. Opdyke was interested in partnership with others in army contracts, to show that they were secret contracts; but he did not think it was. Those transactions were generally developed by the circumstances attendant. Another objection was that at the date of this letter all connection between Mr. Opdyke's son-in-law and the prosecution of this contract had ceased.

Defendant's counsel excepted to the exclusion of the letter.

On Cross-examination—Senator Harris was asked if he knew Charles McNeil? A. No; I understand he was a member of the Legislature.

Q. Do you know his reputation? (Objected to and excluded.)

MR EMOTT appealed to Mr. Evarts as a lawyer and a gentleman, if it was not due to public justice the proper conduct of the case, under the circumstances it having been charged in the opening that W. Opdyke had written this letter of the 25th September, without having any letter from Mr. Harris calling for a communication from him—that the two letters which he held in his hand from Mr. Harris to Mr. Opdyke, should be put in evidence.

MR. EVARTS replied that if the plaintiff's counsel had not objected to the introduction of Mr. Opdyke's letter, and it had been admitted, it would then have been competent for them to have these letters put in proof, exhibited to counsel for the defense, and made the subject of comment to the Court and Jury; but the letter of Mr. Opdyke being excluded, he could not consent to having those letters received.

THE COURT could not conceive that these letters were needed for the purpose of answering—not the defendant's case upon proof, but the defendant's case upon his opening. The Jury knew their duty was to decide upon the evidence of witnesses on the stand; and although things may have stated by counsel which are deemed prejudicial, they go for nothing with the Jury unless substantiated by proof.

Counsel for the plaintiff offered to withdraw all objection to Mr. Opdyke's letter, if that and the two letters from Mr. Harris were put before the jury.

MR. PIERREPONT—Will you let us see the letter?

MR. FIELD—When you let us read it.

JUDGE MASON said the letters would not be received.

MR. PIERREPONT requested permission to say that in opening the case to the Jury, he stated he expected to prove (unless the witnesses stated differently from what they had down from them,) that there was no letter to which this of Mr. Opdyke was a fair reply; and he had to say that such was the evidence they had.

MR. FIELD—That is improper to state in court; I must have this whole subject stop here.

Counsel for defendant read in evidence, the articles published under the date of June 18th and June 25th, the extracts from which contain the libels in suit.

Pending the reading, the court adjourned till to-morrow.

The following correspondence was ruled out on the trial:

FROM IRA HARRIS TO GEO. OPDYKE.

ALBANY, September 19, 1863.

MY DEAR SIR: I have just read in this evening's *Journal* the infamous attack of "T. W." upon you. It will probably have met your eye before this reaches you. I feel indignant that such a publication should be allowed in such a paper at such a time as this. The whole article is characterized by disgusting arrogance; but, in the paragraph that relates to you, the writer seems to have indulged himself in giving vent to his personal malignity. It grieves me to think that the present editor and proprietor of the paper, who is a most excellent and well-meaning man, should be so far under the control of T. W. as to be obliged to allow his paper to be made the vehicle for conveying to the world such a venomous attack upon a political friend, who, to say the least, has as many friends to be offended by it as T. W. has friends to be gratified.

My first impulse was to write an answer over my own signature and ask Mr. Dawson to publish it to-morrow. But as I could only meet the imputations by a qualified denial so far as my personal knowledge is concerned, I thought it better to leave you, who, as I well know, are quite equal to any such duty, to answer T. W. in your own way. I shall certainly insist upon having the columns of *The Journal* open for you if you think fit to use them.

Yours with esteem,

The Hon. GEORGE OPDYKE. IRA HARRIS.

LETTER FROM GEORGE OPDYKE TO HON. IRA HARRIS, PUBLISHED IN THE ALBANY STANDARD AND STATESMAN, OCTOBER 12, 1863.

NEW YORK, Sept. 25, 1863.

MY DEAR SIR: Accept my thanks for your kind letter, prompted by Mr. Weed's attack in the *Evening Journal*, on myself and one of my sons.

I had read the article before receiving your letter, but did not regard it as worthy of any notice from me. I supposed that every one whose good opinion I desire knows the charges against me to be as false as they are puerile and malicious; for I had long since convicted their author, by the sworn testimony of unimpeachable witnesses, of the most reckless disregard of truth in a similar instance.

A few words will show these to be of the same character.

The first charge is, that my son was drafted and sent a substitute. This is not, in its worst aspect, an act worthy of censure. But when I inform you that his notice of draft found him confined to his bed, by severe illness, from which he has not yet recovered; that he could not, therefore, have responded in person, however anxious to do so; but that notwithstanding this exemption he at once gave directions to have a good substitute procured for him—you will readily perceive that he has done all that it was in his power to do, and more than the law required of him. And yet Mr. Weed calls this *skulking*. No other man, I am sure, will be able to see it in that light.

But I suppose that this redoubtable Lobby Chief, in his successful warfare against public virtue and official purity, has acquired more exalted conceptions of the chivalrous than ordinary men possess.

He next charges my son with holding offices.

There would be nothing improper in this if it were true, unless he had bought them of some office-broker like Mr. Weed.

But it so happens that he has never asked for or received an office of any kind, unless the barren commission of notary public may be regarded as such.

Equally groundless is the charge against me of being "gorged with government contracts." This, if true, would not be at all censurable, provided I obtained them fairly and executed them with fidelity; and I defy Mr. Weed, or any one else, to point to a single business transaction of mine in violation of those rules, or of any others prescribed by mercantile honor and fair dealing.

But you will be astonished at the mendacity of the charge when I inform you that these contracts, like the offices of my son, exist only in Mr. Weed's imagination. I have no Government contracts, nor have I any business connection with the Government of any kind, direct or indirect.

These are the only charges. You will perceive that they would be altogether harmless, if true. Being false and malicious, as well as puerile, they can of course injure no one but their author.

I will thank you to ask the conductors of *The Evening Journal*, the paper which these slanders first appeared, to publish this letter. Believe me, sincerely yours.

GEORGE OPDYKE.

FROM IRA HARRIS TO GEORGE OPDYKE.

ALBANY, October 3, 1864.

MY DEAR SIR: I reached home last evening. On coming to my office this morning I found your letter of the 25th ult. I read it with care; it is terribly and justly severe. For myself I have no objection to its publication. The provocation is ample: the chastisement is amply deserved. I can see that it would require some self-restraint to withhold it. But, as a friend, you will allow me to sug-

gest for your consideration whether in making the publication it would not be wise to omit all after the paragraph ending with the words "their author." Upon reflection, I have come to the conclusion that I would do so. Up to this point the letter is *defensive*. It is a triumphant vindication. I would not have the attention of the public diverted from this defense by counter-charges against Mr. Weed. And besides, I think, it would be more dignified for you. While everything you say, and probably much more, is deserved, the public are already pretty well aware of it, and I would retain this "shot in the locker" for future use in case it should become necessary.

Personally, I have no choice on the subject, and I have made these suggestions with hesitation. They merely indicate the course which I should feel inclined to take if I had such a case on my hands. Entertaining these views I have not shown the letter to the Editor of *The Evening Journal*. I will still do so if you desire it, but I think you may assume that he declines to publish it and would have the letter inserted in *The Tribune*. I will see that it is copied into *The Statesman*.

The part of the letter which I propose to have you publish is exactly right. The allusion to former charges is very proper. I see nothing, not even a word, in all that which I would change

And now, my dear sir, I trust you will excuse me for the freedom with which I have written. I have done so in the spirit of the sincerest friendship, and with the feeling that an *outrage* had been committed upon you, and that its author deserved to be punished. Your own better judgment will decide what value there may be in the suggestions I have made. Yours with esteem.

IRA HARRIS.

The Hon. George Opdyke.

SEVENTH DAY.

WEDNESDAY, DECEMBER 21ST, 1864.

At the opening of the court, Mr. Pierrepont said: If your Honor please, you will remember that in the progress of the case yesterday, certain letters were ruled out of evidence. In the *Tribune* of this morning, these letters are published in the proceedings of the court of yesterday. I call your Honor's attention to it simply to say that you will remember that yesterday, when the subject of whether we would consent to have any such letters appear, was under discussion, and somewhat warmly, your Honor stopped us all, and put an end to the matter; and we had, of course, no opportunity for any consultation whatever about it between ourselves until last evening. We are relieved this morning from what we had altogether, on consultation, determined to do, by the letters appearing in the newspaper. We had stated, in our opening, that this letter of Mr. Opdyke's, which is thus published, was not a fair reply, or real reply to any letter which had been received. That information we received from such a source, and with such particularity, that it seemed impossible that we could be mistaken upon that subject. The letter of Mr. Harris, which is published this morning in the *Tribune*, we wish to state, is a letter to which that letter of the 25th of September is a fair reply. The letter is as extraordinary as the information that we had received on the subject—that there was no letter to which this was a fair reply. But we wish here to-day to state that we do consider this a letter to which the other is a fair reply.

Mr. Field—If the court please, while the matter is under consideration, I beg to state that the recollection of the learned counsel in respect to what he said is not accurate. What he did say was this: "Would you believe it that this statement concerning this 'kind letter' which had been written to Mr. Opdyke, was, every word of it, a *lie*." Senator Harris never wrote him a word in reference to the subject; it was a mere concoction, and the very envelope that carried this letter, asking it to be published in the newspapers, contained a private note, asking to be allowed to use this trick and this fraud." Now they had this private letter of Mr. Opdyke's, which they call a trick; and it has no reference to a trick.

Mr. Pierrepont—I have no further remarks to make.

Defendant's counsel was about to proceed with reading the articles, containing the alleged libel.

Plaintiff's counsel objected to reading the whole of the articles, which were very long, and the great proportion entirely irrelevant to the subject of the libel.

Mr. Pierrepont—If anything is settled, it is that the articles, from which the libels are selected, may be read.

Court—I understand the rule to be, that the counsel may read all in the libel that has any reference to, or can in any manner be said to relate to, the subject the libel is founded upon. It is difficult to discriminate. Perhaps it is as well to let all go in if desired.

Mr. Evarts—We cannot divide it.

Plaintiff's counsel excepted to the admission of the articles at length.

Mr. Pierrepont then concluded the reading of the articles.

TESTIMONY OF JOHN C. FREMONT.

John C. Fremont was then called on the part of the defense, though out of order, as

the counsel stated, in order to accommodate the witness in view of his engagements. He testified as follows: My residence during the last eight years has been in California and in this city; I was the owner of mining property in California known as the Mariposa estate, about 44,000 acres; I had been owner and part owner about seventeen years; in the Summer of 1862 it became the subject of a stock incorporation; it had been worked since the Winter of 1845–9; the product was principally gold; there were other minerals in lesser quantity; it was worked by surface washing and regular mining in the vein: it had produced from surface washing a number of millions of gold; I cannot state the amount, as the accounts were loose; from regular mining I suppose it had produced about $3,000,000; it supported several thousand people; several companies were established on the property; that was the state of it at the time it became the subject of incorporation; I then owned five-eighths, and held the legal title to six-eighths; the remaining two-eighths were owned by Frederick K. Billings and A. A. Selover, each one-eighth; the beneficial interest in the other one-eighth was in Trenor W. Parke; all these were Californians; since the incorporation they have all become residents here, or in the Eastern States; it was valued at $10,000,000; that valuation was fixed upon it in all the different negotiations founded upon what it had produced regularly; it was first a subject of negotiation in San Francisco at that valuation, then in England, France and Germany; the entire property went into the corporation, including the shares of the other owners; everything that belonged to the estate, movable property and all; no other property went in that I am aware of; the property was subject to incumbrances, or liens, at the time the negotiations commenced, estimated to be something over $1,250,000; on settlement it was found that there was about $1,000,000 more required to pay the debt; the monthly interest account was about $13,000, the larger part being at two per cent. a month, and a large part of that compounding monthly; we undoubtedly took into account the debts, in estimating its value at $10,000,000, which was considered its value as it stood; the negotiations to form the company here commenced about the end of August, 1862; I was then very slightly acquainted with Opdyke; I knew him in 1856, in connection with the political campaign, as one of the members of the Republican party; I did not know Morris Ketchum prior to the time of the negotiations, in connection with politics—only generally, as a man of business here; I did not know Hoey prior, except by reputation; I had known Selover and Billings in California well, and I had personal acquaintance with Simon Stevens prior; he resided in this city, and was engaged in business here.

Q. State how these negotiations commenced and how you were brought in connection with Opdyke, Field, Ketchum, and Hoey concerning them? A. A few words of explanation will be necessary; as I have already stated, various other negotiations had been attempted; in the spring of 1861 I went to Europe with Frederick Billings with a view of procuring a loan to pay the debts of the estate and form it into a company; soon after our arrival there it was found the undertaking would be very difficult or impracticable, on account of the near prospect of a civil war; some attempts were made, and some not very positive offers were received; they were not accepted; when the war broke out I returned to take part in the public service, leaving Mr. Billings to continue his attempts at negotiation; in the summer of 1862 I returned from Virginia to this city, and found the condition of my private affairs such, especially as regarded the Mariposa property, that it required my immediate attention; all the attempted negotiations had failed; Billings had tried in London and Paris; had returned to try in Philadelphia and New York, and had then gone to Germany, and had failed there; the debts of the estate were very pressing, and it had been for some time in the hands of a mortgagee; it had been turned over into the possession of Mr. Parke, who had advanced a large sum upon it, to whom it had owed a large sum, and some other debts were worked out of the property; in that condition, in some conversation with Major Stevens, I proposed to give to him and others whom he might associate with him in the undertaking, one-fourth of the property, for the consideration of procuring the amount necessary to pay the debts, and form it into such a company as was desired; about the 1st of September, Stevens proposed the arrangement to Morris Ketchum, as I understood, and, after various conversations, Ketchum deputed Mr. Allen, who was about to go to San Francisco, to examine the estate and report upon its condition; Allen did so; he examined it in October, and reported in December, and the subject was then, or previously, communicated by Ketchum to Opdyke and Hoey; he associated them with him, and the negotiation went on until about the first of March, 1863, when Hoey was sent or went, on the part of himself and associates, to California, with a view to re-examine the property, to ascertain if it was such as had been represented by the proprietors, as it had been confirmed to be by the report of Allen; in the meantime other negotiations had been concurrently carried on in California; there had been some offers made; Guille, whose principal house was in Paris, repeated an offer which had been made to me in 1861, viz: to furnish or lend a million of dollars to pay off the debts, in consideration of which he was to receive as a bonus one half of the property, I to have the entire control or possession of it; Billings had made a proposition to two gentlemen, one or both of whom had been or

were bankers of the estate in San Francisco, John Parrott and Mr. Loonan; his proposition on the part of the proprietors was, to divide the estate into tenths, to give me five-tenths, to Parrott and Loonan two-tenths, to each of the other proprietors one-tenth, and to outsiders two-tenths; these negotiations were pending; these gentlemen were to advance money to pay my portion of the debt, to be estimated only at a million; and they were to have an interest on the whole debt of one per cent. a month, and to retain, in the proportion of ten to one, my stock until it was paid; the ordinary rate in California at that time was from 2 to 2½ per cent. a month; the proposition was rejected by these gentlemen, they requiring to divide the property into eighths, and to receive two-eighths instead of two-tenths; it so stood in the early part of the negotiations; they subsequently came to believe that it would fail here, and that they could obtain the property on much better terms; they were creditors to a considerable amount; they finally came to demand that the estate should be divided into thirtieths, of which they were to receive 14; I 7, and each of the proprietors 3; Billings who acted for me also in California, wrote me about that time, repeatedly, that I must succeed in the negotiation here, or I would lose my estate there; that I had only the alternative of success here; this was about March, 1863; I then concluded to go on with the negotiation here; I considered that three-eighths of the estate, with its debts paid, and the property put into a revenue-paying condition, was better than none at all; I, therefore, did everything in my power to carry forward the negotiation here; about the end of June the settlements were all agreed upon, the papers were executed, and the company formed; bonds were to be issued to the amount of $1,500,000, by them, and debts were to be discharged; that was specified in the contracts drawn; in the progress of the negotiation my intention and understanding were that the debts were all to be paid—all that had accrued in undertaking to develop the estate and defend it against the attacks of the General Government; in the course of the negotiations that came to be changed in some way, so that what was strictly regarded as liens, such as held the estate, were to be paid; it was made a subject of the contracts.

Q. While you were in Europe was the unsettled state of the title an embarrassment in the matter, and when was it removed? A. It was finally removed by the issue of a patent in 1856 from the General Government; that had been a great impediment to negotiations in Europe and in this country, and to the proper working of the estate, and had been in a great measure the cause of the depressed conditions of the estate—the embarrassment growing out of the attack of the General Government upon that title and many others in California; before these negotiations were ended here all that had passed away, and the title was assured, and it was purely a question of raising the debts from the property; one hundred thousand shares of stock were issued, at the par value of $100; Selover received 12,500 shares; Billings the same, and Parker the same; they have held some that they received then clear of all contribution; the balance, 62,500 shares, represented my five-eighths; under a written agreement which accompanied the contract, 25,000 shares became the property of the three gentlemen who engaged to form the company and obtain the money necessary to pay the debts, namely, Ketchum, Opdyke and Hoey; that left me 37,500 shares; of that, under the same written agreement, two thousand shares were paid to Mr. Field; no other distribution was made of that remaining amount, so far as effected this company, except two thousand shares to Stevens; that left 33,500 shares, of which 25,000 were placed in the hands of Ketchum, leaving me 8,500.

Q. What became of that 25,000 to Ketchum? A. It was made the subject of a written agreement between Ketchum and myself, of which I, probably, have a copy among my papers; (Mr. Field here offered a copy of the paper, which was identified, being dated May 19, 1863, and executed about that time;) this matter came up as one of the subjects of discussion at the close of the negotiation; it was required, I think, by Ketchum.

Q. What did you understand was the disposition required of this additional 25,000 of stock? [Objected to as a transaction between the witness and Ketchum alone, and in no way connected with the plaintiff. Objection overruled: exception taken. A. Ketchum stated that the gentlemen who undertook to form this company here, and to be in some measure responsible for it, desired to be able to control it here rather than to have it controlled in California, as they were fearful that it might, if I should make any change in my ownership and transfer a large part of my shares; and that in view of the accidents to which I was professionally exposed, which might occur sooner or later, he wished to be protected against such contingencies; for that purpose he desired to retain control over that amount of stock in order to enable him to vote upon it; I regarded it as a concession, and after some debate, yielded it; I regarded Ketchum's interest as in connection with others.

Q. What did you understand to be the form or degree of control over these shares that was asked for? [Objected to. The Court—You may answer.] Was it simply the right to vote? A. That was the reason given by Ketchum.

THE COURT—Q. Still the stock was actually transferred? A. It was transferred to him to hold in trust.

Mr. EVARTS read the agreement between Fremont and Ketchum, transferring the 25,000 shares for a certain time, or until the bonds, not exceeding $1,400,000, were paid, when they were to be re-transferred: in the meantime, Ketchum was to vote always for Fremont, so long as they remained in his hands, and should use all his powers to make the dividends fifty per cent.

Q. What caused the issue of $1,400,000 in bonds? A. It was ascertained by Hoey, in California, that that would probably pay the debts; the nearest amount to which he could reach; the remainder was proposed to be used in further developing the property; the bonds were to be a first lien.

At what stage of the transaction did the payment of the 2,000 shares each to Stevens and Field come up? A. The amount originally offered by me for this arrangement was quarter of the property; in the course of the negotiation, it came to be held by the three gentlemen, Ketchum, Opdyke and Hoey, that that quarter belonged principally to them, and that Stevens was not entitled to a very large share; there was some disagreement in regard to it, and as there had been a change in the form of the negotiation which gave to me a rather larger amount of shares than I would originally have been entitled to, I gave to Stevens myself voluntarily a certain amount, which amount comprehended both those amounts of 2,000 shares to Field and 2,000 to Stevens.

Q. How and when did you learn that 2,000 shares were to be paid, or desired to be paid to Field? A. From Field himself, shortly before the conclusion of the transaction, I think.

Q. Were communications passing between you here and the California parties at the close of the transaction? A. Constantly, very frequently, by letter and by telegraph; in the month of November I learned more distinctly that I must close it here; from the first to the close of the month we communicated daily by telegraph.

Q. On what ground was there an agreement that you were to part with any shares to Mr. Field? A. There had been an agreement to part with a certain number to him, embracing those that Field was to receive; I had no arrangement with Field in respect to the shares; his understanding was with Stevens.

Q. Did you know it was 2,000 shares till Field informed you? A. I did not.

Q. Up to that time the agreement was whatever Field was to receive you were to pay? A. I knew that it was to come from me, but not in that way; I did not know the amount; it was to be in consideration of his services as counsel and legal adviser in this negotiation; the proposal was originally made to Stevens to undertake to find men of sufficient financial strength to accomplish the negotiation, and to him the offer of one-fourth of the estate was made, with such associates as he could procure.

Q. Then these payments to Field was, in fact, outside and in addition to the one-fourth? A. They were, as it turned out.

Q. What finally became of the 25,000 shares that went to Ketchum under this paper? (Objected to as in no way connected with the plaintiff.)

The witness further stated that he presumed Ketchum claimed the control of the company in the name of his associates, and that Opdyke was present at the time the proposition was made; the three gentlemen acted together.

The Court allowed the evidence to be given upon the statement of Mr. Evarts that he intended to connect the plaintiff with the transaction.

WITNESS—The agreement said it should be transferred, but it was issued originally to Ketchum at the time the other issues were made; the distribution was the subject of a written agreement; the whole of it was transferred by Ketchum to me; it was originally the subject of a suit on my part, but the suit was discontinued.

BY THE COURT—Do you know whether Opdyke had any connection with this particular matter? A. I do not know distinctly; he may have had, but to what extent I do not know.

BY THE COURT—Do you know that he had not? A. No, sir, not certainly.

MR. EVARTS—He knows the result.

WITNESS—Yes, sir; it was transferred to me, or made subject to my control.

Q. What was the result; how did it come back to you? (Objected to.)

The Court allowed the evidence, upon the statement of defendant's counsel that he would connect it with the plaintiff. (Exception taken.)

WITNESS—The transfer to me was upon an arrangement that I should sell 5,000 of these shares for 25 cents to Mr. Hoey, I believe, for himself or for Ketchum; I have understood from one of the parties that the object was to have as large a control still, in the same sense, of the stock.

Q. What was the market price of the stock at the time you were to sell it at 25? (Same objection.) A. It was considerably above 25—some 10 or 15 per cent, I believe; it was done, I think, in October, 1863; the stock was then sold at the public Board of Brokers.

Q. In whose checks were you paid? A. In two separate checks signed by James Hoey; Opdyke was not in any way connected with the checks; the two checks paid for the whole; I believe a million and a half of bonds have been issued; what amount applied to the payment of the debts I can only state from the hearsay; it was a matter carried through while I was one of the directors; I believe the whole amount was applied to the payment of the debts; that question came up as between the company and myself; I think there were found to be something over $2,000,000 of liens; legally, they might have been less, but upon arrangement with the creditors they amounted to that.

Q. Do you remember anything about a parcel of $280,000 of those bonds being a subject of controversy between you and those associates? A. About the time this suit began, I had understood that there was that amount unappropriated, out of which I required that the incumbrances which were not liens, should be paid, but my knowledge on that point is indefinite; I suppose I learned such to be the case; I commenced a suit to enforce the payment of those incumbrances by the company, and it was finally adjusted between us; what became of the bonds, I do not know; it is well to say, in this connection, that those debts, not liens, were finally paid by myself, and not by the company; I paid something over a quarter of a million—not that special amount of $280,000—which I contended those bonds ought to be applied to; I know John J. Howard, who was a resident of California; I formed his aquaintance in 1856 here as a member of the Republican party; our relations were quite intimate and confidential; I learned that he left for Europe some weeks ago.

Cross-examined by Mr. Field.—The best offer I got in Europe or anywhere else was the one which was repeated by a branch of the house in San Francisco, as I have stated, viz: one-half of the estate as a bonus, a loan of $1,000,000 to be returned with interest, and thus one-half of the profits to go to the old proprietors; that was subsequent to the perfection of the title; I saw the Rothschilds; Billings may have received better offers, but that was the best I heard from him; the offer to Billings in Philadelphia was to convert $750,000 of the indebtedness into 20-year 10 per cent. bonds, for which the promoters of the enterprise were to receive from one-fifth to one-fourth of the estate; the disposition made with Ketchum was the best I was able to make subsequent to the confirmation of the title; when I returned from Virginia in 1862, beside the incumbrances of $1,250,000, Brumager had a claim of one-eighth of the estate, and Parke's claim was one which I discussed before recognizing it; it was one-sixteenth; the claim of Brumager had no foundation, but he made it; it was for $225,000 at two per cent. a month compounded. Parke's was for $400,000, embracing the other one; he claimed also on behalf of Loonan part of a claim amounting to several thousand dollars, to be paid in gold; there was also due workmen a large amount; I had ceased to receive remittances from the estate; the product should have been greater than the interest account, but I found the debt increasing; when I returned to California, I proposed to Stevens to sell the estate; after various conversations the result was this offer from me; it was through Stevens that Ketchum was brought in, and executed the deed of one-quarter the estate to Stevens and Ketchum in December, 1863; the agreement by which I gave him 7,000 shares was sometime subsequently, if my memory serves me; (deed executed Dec. 12, 1863, produced to fix the date;) it was about that time that the articles of association were drawn and sent to Albany; there were discussions extending over nine or ten months; (paper of 24th of January referred to to fix date of agreement to transfer the 5,000 shares, which witness thought was later;) at that date I had made no arrangement with you about your fees; I authorized your retainer at the commencement of the negotiations; the arrangement with you I left to Stevens; I never knew what it was till you informed me—until the 2d of July; there was a conversation in your office on that day, which is identified by this paper, respecting the amount to be issued to Stevens, about which there was some discussion; it resulted in my inquiring of you the amount of your demand, or what you received.

Q. Was not this the occurrence precisely? You preferred not, then, to issue it to Stevens, for certain reasons; I then asked you whether you had any objections to directing the issue to me immediately of what was to come to me? A. Yes, sir.

Q. And you immediately replied, "None at all?" A. I remember that my answer was immediate to you; that I agreed to it and wrote a note to Ketchum.

Q. Do you remember saying, when I told you what it was, "Yes you richly deserve it," and wrote the note? A. I made some such remark.

Q. Now, if my fees had been 5 shares or 5,000 shares, would that have lessened what you were to receive from the establishment? A. No, sir.

Q. The whole came from Stevens did it not? A. It came from Stevens; that is, from the portion he was entitled to.

Q. Was not the basis of the scheme, then, the issue of 36,000 shares of stock for the payment of the debt, and to get cash subscriptions? A. Yes, sir.

Q. That would leave you one-half, or 32,000 shares, excluding any claim of Parke for

one-eighth? A. That was the arrangement to which we came in the last negotiation. (Objected to as not pertinent.)

MR. FIELD—The claim is that these gentlemen, working on Fremont's political aspirations, proposed to put his estate into their hands for the purpose of making him a Presidential candidate.

THE COURT—I don't see how it reflects on the libel.

MR. FIELD—I am only showing that he finally received not 32,000, but 37,500 shares, and realized as a residue more than a million of dollars more than the original offer, and that there was no exaction at all.

The court ruled the evidence admissible as part of the negotion.

QUESTION BY THE COURT—State now what the arrangement was?

WITNESS—An arrangement of the kind you began to describe was made, as the first one, in which the debts were to be paid from the sale of a certain amount of stock set aside for the purpose; that arrangement was afterwards changed, and it was provided that the debts were to be paid by funds issued upon the mortgage of the property; that gave to the proprietors a larger amount of stock than they would have had if a part had been taken with which to pay the debts; I received a larger amount of stock in consequence.

Q. During all these negotiations, was there any pressure upon you, on the part of any of these gentlemen, to get you to come into the arrangement? A. No; there was a negotiation which they conducted on one side, and I here on the other; my copartners in San Francisco contributed their parts.

Q. The urgency, or pressure, if any, was it not on your part, to get it accomplished, rather than on theirs to get you to do it? A. I think so; at least I felt as strong a disposition, or stronger, to carry it out than they did; but I do not know what their motives were, more than that.

Q. Was any unfair advantage taken of you by any of these gentlemen in any of these negotiations? A. No, I think not.

Q. Now, to show how great the urgency was for a consummation of this affair, I ask you to look at this telegram, d ted November 4, 1862. Did you receive that? A. O, yes, I received this from Mr. Billings: "Allen left by over route; Doyle takes powers; matters press; relief or ruin; you must do something. Fredk. Billings."

[Counsel produced a large number of telegrams, which were identified by the witness, and read some of them urging the necessity of an arrangement, and the need of coin to pay the Parke claim and others. "Dec. 9, 1862. Parke gives possession, if his accounts are passed at $1,400,000 in coin. Take possession if you consent to pass his account."

Jan. 16, 1863. "Your position with Ketchum makes it inconsistent with me to longer hold your power of attorney; I will substitute any one you name. . . Ketchum only paid currency. . . Do not be surprised if you lose the whole estate; after your gallant fight, I grieve that on the eve of victory, you should only have defeat."]

Q. In all the negotiations you had with the gentlemen named by you in this examination, did they not honorably and fairly carry out their various agreements with you to which you have referred? A. I think they have; you remember there were controversies which were adjusted as they came up, growing out of our different interpretations of the agreement.

Q. In point of fact, the debts proved to be a great deal more than was expected. A. Yes, sir.

Q. It was expected that the debts and incumbrances would be one and a half millions, and they turned out to be over two millions, and a large number of private debts which they paid in addition? A. Yes, sir.

Q. Who is Mr. Doyle, referred to in the telegrams? A. Mr. John T. Doyle, a lawyer in San Francisco; he brought powers to act for Billings and Selover; there were long negotiations with him here; I came to Mr. Field's house in negotiations with him, sometimes in the night, sometimes in the evening, and sometimes in the morning; there were long discussions with him.

Q. What was the difficulty with him in regard to arrangement? Was it not that the other two co-owners, Billings and Selover, insisted upon certain terms which the gentlemen here were not willing to give? A. Some of it was; I think the principal difficulty was with Mr. Doyle himself; he was quite an impracticable man; I know at one time you asked him if he could himself write anything, to which he would agree as his arrangement, and he did not succeed in doing it.

Q. While Mr. Doyle was in San Francisco, was there not a vast deal of negotiations going on in reference to the matter? A. Yes, sir.

Q. State how long this negotiation was? A. I can only say they were long, and difficult, and complicated, because some of the proprietors of the estate were in California; it required to be examined very particularly, to see whether the statements made by the proprietors were borne out by the facts; that, coupled with the fact that the

money to be paid out was large, made the negotiations long, tedious, and laborious; I know Mr. Field had a great deal to do; he was very much occupied with the negotiations; he gave a great deal of time and attention to it, and a great deal of care necessarily, from the time I first spoke of to the time they were consummated.

Q. Are your relations with these gentlemen still friendly? A. They are.

Q. Are your relations with Mr. Ketchum intimate and confidential? A. They are he is my banker; my relations with Mr. Field are confidential and friendly; they are the relations of counsel and client; he is still my counsel, and until recently he had quite a large number of suits of mine in his hands; within a short time a settlement of several of them took place.

Q. I call your attention to this passage: "More than a year ago Mr. Opdyke and others reminded Gen. Fremont that when a candidate for the Presidency in 1856 he was weakened by pecuniary embarrassments." Is that true? A. That statement is not correct.

P. Was there one word mentioned to you on political subjects by these gentlemen? A. There may have been; there was nothing said to me that was personal to myself, as intimated there—nothing of that kind.

Q. "And that as his friends intended to run him again, it would be wise to put his affairs in better shape" Did that occur? A. I have no recollection of anything of that kind; I am very sure there was nothing of that sort.

Q. It proceeds: "The General assented." Is that true or false? A. The character of that is shown by the previous testimony.

Q. "Giving to Messrs. Opdyke, D. D. Field, and Ketchum a schedule of his debts." Is that so? A. A schedule of the debts of the estate was given to these gentlemen early in the negotiation—one brought by Mr. Doyle and another by Mr. Stevens—at the time of the offer, in the first conversation; it was necessary to make them acquainted with it; not a schedule of my private debts, but the debts of the estate; the list I gave was a list of the debts of the estates; they were not required to pay my private debts.

Q. The $280,000 bonds you have been asked about, were they not all applied to the payment of the liens? A. I believe that they all were; I so understood it; the accounts of the company show that they have been.

Re-direct: Are you able to say that, during the period of time these negotiations covered, you had no political conversation with Mr. Field or Mr. Opdyke, or any of those other gentlemen? A. No, I cannot say that; but I can say very distinctly that no conversation of that character took place.

Q. None in which your debts were brought in connection with the subject of political purposes? A. No; I can say so distinctly; for the reason that I myself intended to avoid, and did avoid, any such conversation as that; there were the usual preliminary conversations that occur between men when they meet together—political and military—but nothing personal; I intended to avoid such conversations, and did; I did not intend that gentlemen with whom I had business relations should suppose that for that reason I would attempt to obtain their friendship in any other way.

Q. You were nominated for President during the last campaign? A. Yes.

Q. What was the beginning and end of those negotiations in point of time? A. I think about the first of September, 1862; the proposition was made to Mr. Ketchum, and he was paid on the 2d of July, 1863.

Q. During that time, how many occasions did you have for professional interviews with Mr. Field? A. There were many such occasions; it would not be possible to remember them; they were very frequent, because the negotiation was difficult and long; a meeting would usually take place on the receipt of any telegram, or letter, or upon a reply; with the details in California we had nothing to do here, except to receive the reports, and be informed of what progressed there; there were frequent letters and telegrams; probably on some occasions letters and telegrams were received from California daily.

Q. With the exception of the visit of Mr. Doyle, the attorney, was there any agent from the other side with whom those interviews were needed to be had by Mr. Feld? A. Simply Doyle.

Q. Was Mr. Billings a lawyer? A. Yes, and Parke also; Selover was not; he was engaged in other business at San Francisco.

Q. Did the shares of Parke or Billings, or Selover contribute to any of these burdens of getting this property into shape, or did it all fall upon your five-eights? A. It has all fallen on my five-eights; there is still unsettled controversy on that point with those gentlemen; but, as it now stands, it has fallen upon my five-eights.

Q. Do I understand you rightly, that your proposition to Simon Stevens was to part with one-fourth of the estate, to cover all things in bringing it into availability? A. Yes; 25,000 shares covered that proposition.

Q. The 7,000 shares more were to go to Mr. Stevens, and include whatever was to be paid to counsel, and what was actually paid Mr. Field as counsel? A. Yes, sir.

Q. In what stage of the matter did that 7,000 shares additional come up? A. It appears, by the contract made with Mr. Stevens, that it came up in January.

Q. Those negotiations in Europe, to which your attention has been called, were all broken off at a period that the pending or threatening civil war prevented negotiations? A. Yes, sir; I was informed that in the near prospect of civil war, it would be impossible to make any advantageous arrangement in London; Mr. Billings wrote to me from Germany that, if the estate were of solid gold, no arrangement could be made there; I acquiesced in that view.

Q. Was there any dispute or difficulty as to the right of the other owners—Selover, Parke, and Billings—that these gentlemen here had to attend to; was not their shares fixed and understood as between them and you? A. Yes, absolutely.

Q. These gentlemen here did not do anything toward arranging their relation to the property? A. No; they might have contributed a friendly aid; there was no dispute in which these gentlemen were involved; the controversy was between Mr. Parke and myself, so far as there was any; these other parties had nothing to do with it.

Q. Did they contribute any money toward working or arranging any of the difficulties between you and any of these associates? A. They did, to the extent of advancing money to me personally—amounts which were required in settlement.

Q. Of the debts of the estate? A. No; in respect to the portion of those debts which belonged to the different proprietors; there was such an advance made in the case of Major Selover—a temporary advance by Mr. Ketchum, as my banker.

Q. Did any of these associates pay any money of their own in discharging any of the debts of this estate—whether liens or not liens—or were they all provided for and discharged out of the credit of the new company? A. I suppose that they were finally to be provided for out of the credit of the new company; whether or not, in the early stages of the existence of the company, these gentlemen advanced money themselves, or took a certain number of bonds, I do not know; I have understood that they did, but I do not know.

Q. But otherwise, do you know of any contribution of money or property, in any way, toward making up the capital of this company, which was held for its debts, and which its stock represented, except the Mariposa property? A. No, sir.

Re-cross—Q. Did they not advance the whole money, to the amount of $1,500,000 to pay the debts of the estate? A. I have answered that; I do not know whether they advanced the money and took the bonds, or whether the lands were sold; I know they obtained money and the debts were paid; I did not know of bonds selling at 70; recently they have been quoted at par; they have been below par; they were not below par, I think, at the formation of the company.

Q. You were asked if you were a candidate for the Presidency; did any one of these gentlemen do anything whatever in reference to your nomination? A. Certainly not, to my knowledge; if you mean to ask whether these gentlemen were politically friendly to me or not, I can say that I never considered them so, except, perhaps, Mr. Hoey, and of him I know nothing particular.

Q. I think you will say emphatically that, so far as your counsel is concerned, you understood he was not? A. Yes; I never held him to be a political friend.

Q. In the course of the negotiations, were there not a great number of telegrams back and forth from California? A. There were many telegrams, sometimes an expense of $150 a day for telegrams, day after day.

Q. Why did you give the subsequent 7,000 shares to Mr. Stevens? A. Because of some disagreement between the other gentlemen—Ketchum, Opdyke, and Hoey—as to the amount he should receive; he had no right to claim it from me; he might have had a right to claim it from the other gentlemen; I gave it voluntarily, for the purpose of facilitating negotiations.

Q. Except the suits settled, are your other suits in Mr. Field's hands? A. Yes; one is by Mr. Loren Jones against me.

Re-direct Examination—Q. Do you know whether Mr. Stevens received any part of the 25,000 shares that went to Ketchum, Opdyke, and Hoey? A. I do not know; I have not been informed he did.

Re-cross—I presume that Mr. Ketchum and his friends advanced Hoey's expenses to California; I did not hear of their being paid any other way; they paid expenses of telegrams, amounting, as I was informed, to $150 a day for a period.

Re-direct—Do not know the amount of Hoey's expenses; I did not ask these gentlemen to advance these expenses during the progress of the negotiation, as personal debts of mine; I understood, as a matter of course, that they were expenses belonging to the formation of the company.

TESTIMONY OF T. C. FIELDS.

THOMAS C. FIELDS, sworn—Examined by defendant's counsel—I was employed as counsel by the Committee of Supervisors on Riot Claims, on behalf of the City

and County; went there first on August 20th, 1863; claimants made written statements, and my examination was in the nature of a cross-examination on those statements. When we came to the claim of Mr. Farlee, Mr. Blunt said to me that he desired to investigate this claim himself, for the reason, as he stated, that he was an expert at the business, and he thought he could conduct it better, or as well as I could; he said he did not desire me to be present; I was in the room, conducting other examinations, at the time the examination of this claim was proceeding; I heard portions of the testimony, as I was sitting near; when Mr. Blunt was ready to report, I protested on the part of the city; I objected to the action of the Committee upon the claim, and stated that I considered it my duty, on behalf of the city, to suggest the propriety of examining witnesses on the other side, that all the parties that had been examined, with perhaps one exception, were the agents or the employes of Mr. Farlee or Mr. Opdyke; I used Mr. Opdyke's name at the time; I stated I thought General Whitney, who was in the city, and who had been four years Superintendent of the Springfield Armory, should be examined in regard to the arms, as he was familiar with guns and with the machinery for making them, and with this very arm; I stated this to the committee, to Mr. Blunt; they were all, or a majority of them in the room; Mr. Blunt said he was satisfied, that he was ready to report on the claim, and ready to act upon it; I then stated that it was a matter, as the Mayor was connected with it, and they were all members of the City Government, about which there might be some public discussion, and I suggested the propriety of having the investigation as thorough and exact as it had been in other cases; it laid over a day or two; no witness was examined, and the claim was passed; I was present when it was passed; Mr. Purdy. Mr. Opdyke, Mr. Ely, Mr. Blunt, Mr. Davis, and the Comptroller were present: I think a full committee; Mr. Opdyke made a statement in regard to the claim; I think he said that a large portion of the claim came to him; that he was interested, and did not desire the committee to be controlled by what he said.

Q. What did he say further? A. I do not know; only he said that the loss had been more than the claim, in his judgment; as they were passing on the claim, I suggested to Mr. Purdy the indelicacy of Mr. Opdyke remaining present when the vote was taken, or voting on the claim; Mr. Purdy suggested to Mr. Opdyke, and Mr. Opdyke either walked out of the room, or to the door, when the vote was taken; the claim was then passed, after a deduction of $199,700.

Q. It was not referred to the Fire Committee, or any one? A. No, sir; it was passed I think, the second meeting after the investigation; one gentleman proposed that they should pass the claim, deducting the odd cents; another suggested that that would be a ridiculous reduction; I think the suggestion of the $199,700 was made by the Comptroller.

Q. Were there other claims for guns before the Committee? A. Yes, quite a number; the examination on those other claims, were most thorough and extended, to my mind; Mr. Blunt had the supervision of these claims, too; witnessess were examined to reduce the amount; I recollect the claims of Mr. Emerson, Mr Remington, and one represented by Major Taylor; there was a most thorough investigation of these cases, and witnessess examined on both sides; I was present when several were investigated.

Q. Did you have any conversation with Mr. Opdyke in relation to this matter? A. Not in relation to the claim; I had in relation to the contract for manufacturing guns; it was before the fire; Mr. Opdyke informed me that he had a contract with the patentee, by which he was to advance certain money, and I got the impression that he was to receive a percentage of the profits—I think 60 or 65 per cent.

Cross-Examined—There was no other case before the committee of the "destruction of a gun factory, that I know of; the other cases of guns were of parties who had guns stored, or where there were guns in hardware stores; I did not take part in all the claims that were disposed of; other investigations were conducted by single Supervisors, sometimes one member, sometimes another; subpœnas were issued for witnesses in some cases; I suggested in this case to send for Mr. Whitney, Mr. McNeil I think, the patentee himself, and some others; Mr. Whitney had examined the machinery, and was familiar with it.

Q. Do you mean to say your recollection is distinct that you suggested Mr. Opdyke's leaving the room? A. It is very distinct; Mr. Opdyke had said nothing about leaving the room before I suggested it; if he had I would not have suggested it; I do not think this claim was put to the vote more than once.

Q. Was any other claim put to the vote while Mr. Opdyke was there? A. There may have been, but I think Mr. Opdyke was sent for, when this claim came up to be passed upon; I think Mr. Purdy stated he would not consent to the passage or consideration of the claim unless the Mayor and Comptroller were present, and he sent for them.

TESTIMONY OF EDGEWORTH BROWN.

EDGEWORTH BROWN, sworn. Examined by defendant's counsel: I have had an expe-

rience of ten years in selling machinery, and five or six years in the trade; am engaged selling machinery for the Stover Machine Company; machinery in use from as early in 1862 to July, 1863, would depreciate forty to fifty per cent.; the tools used in a gun factory would depreciate about the same; after a shop is once started and complete, 150 men being employed, two or three men would be enough to keep the tools in order; the machinery that we [Stover Machine Company] put into the factory must necessarily have depreciated from the time it went in up to the time of the fire; we furnished a large lot of milling machines and some engine lathes; I am now connected with the Stover Machine Company; I have examined the books; I made out the list produced here and used in evidence; it is a correct list of what we furnished this factory.

Cross-examined. There are two kinds of milling machines; they vary in price; the price at which we sold was about $265; from December, 1862, to July, 1863, machinery would depreciate from to 10 to 15 per cent.; can't say how soon machinery in a gun factory would be used up; when I speak of depreciation in value, I mean what it would bring in the market, if taken out of the factory as second-hand; Mr. Stover is not connected with the factory now; can't say when he left; the value of an engine-lathe depends very much upon the number of inches of swing. The witness was examined as to the value of engine lathes and drills, &c., and counsel for the plaintiff put in evidence eight bills made out by the Howe Machine Company, for machines supplied Mr. Marston in February, March, and April, 1862; in which four screw lathes, freight and carriage were charged $691; one milling machine, carriage and freight, $279; one milling machine, milling jaw and freight, $303; another milling machine, freight and carriage, $279; two milling machines, freight and carriage, $598.

TESTIMONY OF PHILIP TILLINGHAST.

PHILIP TILLINGHAST, sworn. Examined by defendant's counsel: I am a commission merchant, of the firm of Hunt, Tillinghast & Co.; had a conversation with Mr. Opdyke after the fire of July; I told him I had a letter from a friend who was making guns for the Government, and had about filled his contract, who would like to deliver some to him; he replied that he did not want any guns; that he had no gun contract.

TESTIMONY OF WM. C. CHURCHILL.

WM. C. CHURCHILL was sworn and examined by defendant's counsel: In 1845 or 1846, I first furnished army blue cloth to the Government; along to 1858, had contract with the Quartermaster's office in Philadelphia; in 1861 Col. Crossman was Quartermaster; in 1861 I had a contract with him for army-blue and sky-blue cloth; I made three contracts for Mr. Opdyke with the Quartermaster; the first was for 15,000 yards full blue cloth; the second for 65,000 yards do.; the third for 16,000 yards do.; all about the fall of 1861, or early winter of 1862; my brother and Mr. Hitchcock had a contract with the Government for 28,000 blue infantry coats about the same time; Mr. Opdyke executed it, or parties connected with him; I think my brother was to have a shilling a coat after they were delivered and paid for by the Government; I do not know of any other contract in which Mr. Opdyke was interested; I had an interest in this last contract; the claims of Mr. Hitchcock and my brother were assigned to me, and I charged it to Mr. Opdyke, from whom I had bought goods, for which I owed him; it will be turned upon my debt in settling; I settled with my brother for 12½ cents a coat.

Q. Did you go to Philadelphia to get any clothes turned in or sold to the Quartermaster? A. I do not know that I went particularly with reference to these goods; I attended to them while there, and urged their passage at the request of the parties who manufactured them, Mr. Carhart and Mr. Smith.

Q. Had Mr. Opdyke anything to do with it? A. As he bought the contract, I supposed he had an interest in it; Opdyke & Co. had the contract, or, rather, the contract was made with Opdyke and Co., but the orders to execute were issued—one to Smith for 16,000 coats, and one to Carhart for 12,000.

Q. By an arrangement with whom? A. I suppose with Mr. Opdyke; I don't know about that.

Plaintiff's counsel objects to this inquiry.

Defendant's counsel offers to prove that Mr. Opdyke had the contract, that he got other gentlemen to make the goods under it, and then they were taken to Philadelphia and put off there. Admitted. Plaintiff excepts.

WITNESS—There was an excess of goods—more than the contract called for; which I went, at Mr. Opdyke's request, to try and get the Quartermaster to pass.

Q. Did you succeed? A. I believe not.

The cloth under the three contracts I named was delivered at Philadelphia and accepted.

I think Carhart and Smith had the written contracts for the coats; and Opdyke and Company for the cloth; the contract for coats was issued to my brother and Mr. Hutchins.

Adjourned to 10 o'clock to-morrow.

EIGHTH DAY.

THURSDAY, DECEMBER 22D, 1864.

The cross-examination of William C. Churchill was reserved until after the examination of his brother.

TESTIMONY OF SAMUEL CHURCHILL.

SAMUEL CHURCHILL, sworn. Examined by defendant's counsel. I live in this city.

Q. State the Government contracts you had, that Mr. Opdyke at any time became connected with, or had anything to do with? A. In the spring of 1862 I had a contract with the Government to furnish them 16,000 army coats, made of piece-dyed blue cloth; it was made with Quartermaster Crossman, at Philadelphia; that was the only contract I had in which Mr. Opdyke was concerned; when I sold that contract to Mr. Opdyke I, at the same time, negotiated a sale to Mr. Opdyke of the contract which Mr. Hitchcock had for 12,000 coats, of the same kind; when my brother and I took the contract for 16,000 coats, we designed filling it ourselves; but my brother communicated to me that he could not find the goods the contract called for. (Objection to what his brother told him.) Mr. Opdyke had the goods, and we could not buy the goods of Mr. Opdyke at a price that would answer our purpose; I went to Mr. Opdyke and negotiated the sale of the contract directly to him.

Q. Why did you sell your contract to Mr. Opdyke? (Objected to.) There was no allegation in the libel that Mr. Opdyke had all the cloth.

Objection sustained.

Q. What was the sale and agreement with Mr. Opdyke? A. I simply sold the contract, or caused the contract to be assigned to Mr. Opdyke, for which he was to pay me a consideration of one shilling a coat on the 16,000; on the other 12,000 coats he was to pay the same price; I received from Mr. Opdyke a written obligation to pay me; my brother had an unsettled account with Mr. Opdyke; my brother took the claim from me, and paid me for my interest.

Q. Do you know whether Mr. Opdyke carried out these two contracts with the Government? A. To the best of my knowledge and belief, he did, or caused it to be done; the contract was filled to the Government; the deliver was made in Philadelphia; I had nothing to do with the completion of the contract.

Q. Do you know about any other contract that Mr. Opdyke had with the Government? A. No, sir, nothing more than hearsay.

Cross-examined—Q. You say the cloths to be used for filling these two contracts with the Government could not be found in the market? Did you seek to find them yourself? A. My impression is that I did, but not to the extent my brother did; he made the inquiries chiefly; we abandoned the idea of getting the cloth; can't say if I inquired of two establishments in New York for the cloths; Mr. Opdyke had piece-dyed cloths; I don't know whether I got the information from seeing the goods, or from conversation with Mr. Opdyke; can't say that I had a conversation with Mr. Opdyke about purchasing the goods, or that I asked him to sell them. My brother imformed me that he could negotiate the contract with Mr. Opdyke, but as it was in my name, he wished me to consummate it; I have had other contracts with the Government for clothing; I did not manufacture the garments myself, but ordered them to be filled by arrangement with clothing merchants; I took contracts, then made arrangements to furnish the cloth to tailors to be made up, and I delivered them in Philadelphia and got paid for them; I made contracts with others to make them up at so much a garment; always carried out such contracts by means of sub-contracts with others.

Re-direct—Q. Did you carry out the contract you sold to Opdyke in the way you carried out the others? A. No.

ADDITIONAL TESTIMONY OF WM. C. CHURCHILL.

WM. C. CHURCHILL, re-called. My brother negotiated the sale of this contract with Mr. Opdyke.

Cross-examined—I do not manufacture clothing myself; have had a good many contracts with the Government for clothing; in one contract for 40,000 pairs uniform pants, I joined Mr. Carhart in the contract, for the purpose of making them, and divided profits, after expenses; in all other contracts I had with Government I sublet, or hired the garments made by contrect. In the contract sold to Opdyke for 28,000 coats, the transfers were made to Mr. Carhart and Mr. Smith; no transfer to Mr. Opdyke; there was a mistake made in making the transfer; Mr. Opdyke requested me to go to Philadelphia and have the 16,000 coats transferred to Mr. Carhart and the other 12,000 to Smith; either throngh my mistake or the mistake of the clerk there, the 16,000 was transferred

to Smith, and the 12,000 to Carhart, I don't know who made the excess of 4,000 coats; I suppose it was Mr. Smith; almost all the contracts I had with Government were made with Quartermaster Crossman; I had one from another Quartermaster; Mr. Weed did not have anything to do with those contracts, or with my getting them; I did not know Mr. Weed at that time; my acquaintance with him has been made since.

Q. Did you know anything about an effort made to remove Quartermaster-General Meigs, and have Col. Crossman appointed in his place? (Objected to. Offered to show the witness's relations with Mr. Weed.) Admitted. A. No, sir, I never heard anything about it; I knew there was dissatisfaction with Mr. Meigs, but I never heard of any effort to put Col. Crossman in his place; after we transferred the contract for coats to Mr. Opdyke, I felt we had nothing more to do with it; I did nothing more; but when in Philadelphia I urged the goods being passed through.

TESTIMONY OF HENRY F. SPAULDING.

HENRY F. SPAULDING, sworn. Examined by defendant's counsel.—I am a commission merchant, of the firm of Spaulding, Hunt & Co.; commission merchant, in woolen goods; have been in the cloth busines 30 years; am familiar with it; I know Mr. Opdyke; in the autumn of 1861 I sold to Mr. Opdyke a quantity, somewhere about 50,000 yards of doeskins, in the white or grey state, prepared for dyeing, but not dyed; Mr. Opdyke made a contract in my presence with a man named Scott, of Paterson, N. J., to have them dyed in indigo blue; they were not dyed indigo blue; judging from some of the goods I had occasion to look at after they were dyed, they were dyed with a composition; there might have been indigo in them, but they were not according to the contract,; this dye is very inferior to indigo blue; I judge it was a very bad dye, from the fact that Mr. Opdyke claimed from me a dollar a coat on 4,000 that were rejected I; don't know why they were rejected; I guaranteed that the merchandise I sold Mr. Opdyke was capable of taking a good indigo-blue; the goods were made up by Carhart & Smith; Mr. Opdyke said the goods were not capable of taking the dye, and that was where the controversy arose between us; Mr. Opdyke told me 4,000 coats were rejected, andsmade a claim on me for $1 a coat, because they had been rejected and would not pass.

Q. Do you know whether these were the 4,000 coats that were attempted to be got in Philadelphia. A. I do not. It takes about 2½ yards to a coat; in the condition I sold the cloth it was 85 cts. a yard.

Q. Did you pay this claim of $1 a coat to Mr. Opdyke? A. No; Mr. Opdyke withheld the money that was due to me on the cloth, and I endeavored to do as I generally do in such matters—to get out of it with a compromise; I consented to adjust it, by allowing $1,700.

Cross-examined—The goods I sold to Mr. Opdyke were my own; I bought them of the manufacturer after having sold them to Mr. Opdyke; I sold them by sample, and then went to Burlington, Vt., and bought the goods; did not tell Mr. Opdyke that they were goods consigned to me; the contract I made with him was for 50,000 yards; I can't say how much I delivered; the contract to dye the cloth was made with Mr. Scott, in my store; Mr. Scott said he could dye the goods; I introduced him to Mr. Opdyke; Mr. Scott had been a dyer of cotton goods—one of the best cotton dyers; it was discussed whether he could dye woolens; I thought he conld; the goods I sold were not defective, in my opinion; Mr. Opdyke claimed that they were; he told me some of the goods were afterwards sent to a Staten Island dyeing establishment, to be dyed over; I know they were not indigo-dyed by Scott, because I sent strips to the manufacturer, and they came back to me stripped of color, and nearly in the state in which they were delivered to Mr. Opdyke, which is proof that they were not good indigo-blue; my impression is that what was afterward sent to Staten Island was indigo-dyed, but the goods were so bedeveled before that by Scott that they could not be made a good color.

Q. Did Mr. Opdyke make the contract with Scott to dye the goods before he told you he would take them? A. Mr. Opdyke told me he would take the goods, provided he could get them dyed; there were so many transactions of the same natnre it was difficult to get them dyed; I suggested to Mr. Scott, and he conversed with him.

Q. How much did you deduct from your bill in consequence of this alleged imperfection? A. Not a penny; I deducted $1,700 to avoid a controversy that would lead to law: Mr. Opdyke claimed nearly $10,000; I allowed $1,700, because I could not get my money without a loss; I thought it was kept unjustly; I take my hand out of the lion's mouth whenever I can.

TESTIMONY OF THOMAS SMITH.

THOMAS SMITH, sworn. Examined by counsel for defendant. I am in the clothing business in this city, corner of Canal and Broadway, and in Fulton street; I formerly

had two stores in Fulton street; I had a contract for the State of New York for making 4,000 or 5,000 soldiers' garments, in conjunction with George Opdyke & Co.; I think Opdyke got the contract—I am not positive—from Governor Morgan; it was for 2,000 overcoats, 1,000 jackets, and 1,000 pantaloons; the coats and pants were to be light blue, and the jackets dark blue; I thought I could do better by dividing profits with Opdyke & Co., rather than buying the goods from them, if I got them at cost; our agreement was to divide the profits; they furnished the goods and trimming at cost; the arrangement was mutually satisfactory, and the goods were made, delivered, and paid for, and I got my portion of the profits; I also got a contract from Opdyke & Co. to make infantry frock-coats; I was first offered 20,000, but it was reduced to 16,000, and I accepted it; Opdyke was to furnish me the goods at cost and advance all the money to manufacture them that I wanted, giving me credit on the goods, and we were to divide the profits equally; after I had made some 13,000 I found that instead of getting the contract for 16,000, that was given to Carhart; but I had cut out 16,000, and I made them up and sent them to Philadelphia; 12,500 were taken and paid for—the others were returned, being in excess of the contract; I stored them in my loft about two years, and at last sold them to Opdyke in the settlement; I lost on the whole contract between $4,000 and $5,000, on account of the excess and the delay in having them passed; I do not know what Opdyke did with the garments left over; I understood he sold them, he named what he thought he could get for them—$2.50 I think; the Government price was $6.87½; the cloth came from the warehouse of Spalding; I got a part of it from Opdyke & Co.; it was piece-dyed doeskin; my contract called for that; I know nothing about Carhart's contract, except that Opdyke, I think, told me it was on the same terms as mine; I had better terms with him than Carhart; at first Opdyke proposed to deliver the cloth to me at a certain price; I declined; afterwards he made me a better proposition, by which the price of the goods was reduced; I was not interested with Opdyke in any contract for sky-blue Kersey pants; no man takes a Government contract but what he has more or less rejected; there were some of Carhart's infantry frock coats rejected on account of rotten pockets; they were afterward repaired and accepted; they amounted to some thousands odd.

Q. Do you know anything about a contract for flannel blouses? (Objected to, the libel being "shoddy blankets.")

MR. EVARTS—The answer sets up in justification "either blankets or clothing."

THE COURT—The evidence must be addressed to the publication as made. I will allow you to prove any contracts, however.

A. I do not know anything about any contract for blouses in which Opdyke was interested; the prices of the garments I have spoken of were: for the jackets, $4.50; for the pants, $3.25 to $3.75; for the overcoats, $9.50; In the Philadelphia contract the price was $6.87½, of which 12½ cents were to go to W. C. Churchill.

Cross-examined—That was the price for which they were sold to the United States; it was too low; there was a profit in it for a large contract, which would have paid very handsome; the price charged to the State was about fair; I bought a portion of the cloth outside, of others, for the United States garments—the 16,000—but Opdyke furnished the majority of the goods; one-third were not the Spalding goods; I bought on my own credit alone; some of the garments were injured by delay in inspecting them in Philadelphia; by Churchill's advice, I sent a young man with the goods, and they were put in the arsenal, and when I found I could not get a receipt I went and discovered them covered with canvas, and lying in three inches of mud and water; they said each contractor had to take his turn and come at a particular time according to notice; so I took them out and hired a room for them, apprising the officer of the facts; he assured me I should not lose the goods; a portion of them were taken; and he would have taken the excess but Capt. Cruser would not accept them because he would not have any more piece-dyed goods; they were worth very little, if anything, when they came back; I do not know any clothing manufacturer who would give over a dollar a piece for them in consequence of the injury they had sustained; infantry frock coats are worth nothing if the Government don't accept them; Opdyke carried out every agreement he made with me fair and square.

Q. (BY MR. EVARTS.) To your satisfaction? A. No, I cannot say to my satisfaction.

Q. You had a difference with him? A. I certainly did.

Re-direct—On the State contract we made about 75 cents to $1 on each of the 2,000 coats, 50 to 75 cents a pair on the pants, and the same on the jackets; on the United States contract in the settlement I gave Opdyke the coats that were left over, and gave him my check for $4,550, being that amount out of pocket; the difficulty was about the settlement; what Opdyke lost I do not know.

TESTIMONY OF SETH C. KEYES.

SETH C. KEYES, sworn. Examined by counsel for defendant—In 1861-2 I was inspector of clothing, blankets, and army equipage for the United States, in the office of Col.

Vinton, the only office in this city ; Opdyke furnished between 50,000 and 60,000 blankets in 1861-2, amounting to from $175,000 to $200,000, which were inspected by me and issued to the army.

No cross-examination.

TESTIMONY OF F. E. BACON.

FREDERICK E. BACON, sworn. Examined by counsel for defendant—I was inspector of clothing, piece-goods for the United States Government, under Col. Vinton ; there were received from Opdyke abont 20,000 yards of three-fourths dark blue coat cloth, and 50,000 three-fourths dark blue flannel ; the price of the coat cloth was $1.12½, and the flannel about 50 cents per yard.

Cross-examined—The goods were passed according to contract made in pursuance to proposals issued by the Government.

Re-direct—Some goods were rejected, as is always the case.

TESTIMONY OF THOMAS F. CARHART.

THOMAS F. CARHART, sworn. Examined by counsel for defendant—In 1862 I was a clothier ; the plaintiff was interested with me and other parties in Government contracts. Witness here exhibited a memorandum of numerous contracts in which the plaintiff was interesied with him, commencing with the 24th of September, 1861, and ending 4th of May, 1863, amounting in the aggregate to about $4,800,000 ; Opdyke's interest in one portion was one-half the profits, in another one-sixth, and in another one-third ; and the contracts were procured in the witness's name. Opdyke going security for performance ; Opdyke's share of the profits on the whole was $172,000.

List of Contracts for Clothing made and filled by Thomas F. Carhart, in which George Opdyke & Co. had an interest.

WITH THE UNITED STATES GOVERNMENT.

		Quantity—Article.	*Price.*	*Total.*
1861.				
Sept.	26	30,000 Cavalry jackets	$6 12½	$103,750
"	24	30,000 Infantry frocks	6 87½	206,250
Nov.	4	3,000 Overcoats	7 00	21,000
"	22	5,000 Cavalry overcoats	8 50	42,500
"	22	16,000 Frocks	6 87½	110,000
Dec.	11	36,000 Frocks	6 87½	247,500
"	21	25,000 Frocks	7 00	175,000
"	27	50,000 Frocks	7 00	350,000
1862.				
April	23	3,400 Yards green cloth	2 75	9,350
July	28	25,000 Knit drawers	91¾	22,916
"	23	9,000 Canton flannel drawers	67	6,030
"	82	25 000 Blue flannel drawers	1 11	27,750
Aug.	4	9,000 Blouses	2 91	164,600
"	29	50,000 Blouses	2 45	122,500
"	29	50,000 Blouses	3 02	151,000
"	29	50,000 Infantry trowsers	3 60	180,000
Sept.	1	75,000 Infantry frocks	7 00	525,000
"	1	40,000 Blouses	3 02	120,800
"	3	30,000 Overcoats	9 75	292,000
"	19	6,400 Overcoats	9 75	62,400
"	19	8,500 Overcoats	9 90	85,140
"	26	5,000 Overcoats	9 00	45,000
		20,000 Cavalry trowsers	4 70	94,000
		10,000 Infantry trowsers	3 70	37,000
Oct.	13	15,000 Infantry frocks	7 00	105,000
"	15	30,000 Infantry overcoats	9 75	292,500
"	16	10,800 Infantry trowsers	3 40	36,720
"	21	15,000 Blouses	2 10	42,000
"	21	8,000 Frocks	7 37½	59,000
"	29	30,000 Shirts	1 47	44,100
Nov.	13	5,000 Cavalry overcoats	11 75	58,750
Dec.	11	40,000 Blouses	3 20	128 000
"	22	100,000 Shirts	1 55	155,000
1863.				
Feb.	23	10,000 Shirts	1 55	15,500
"	23	2,500 Cavalry trowsers	4 63	11,550
April	6	10,000 Blouses	3 12½	31,250
"	13	25,000 Shirts	1 75	43,750
May	4	5,000 Blouses	2 90	14,500
		Total		$4,419,606

WITH OTHERS THAN THE GOVERNMENT.

Parties.	*Quantity.*	*Articles.*	*Price.*	*Total.*
Smith Bros	3,732	Infantry overcoats	$7 75	$23,923 00
Smith Bros	652	Cavalry overcoats	9 75	6,357 00
Smith Bros	302	Cavalry overcoats	9 75	2,944 50
Read & Co	4,953	Gray overcoats	7 50	37,147 50
Read & Co	3,088	Blue overcoats	8 80	27,174 40
Eames	20,168	Infantry pants	3 37½	68,067 00
Eames	20,748	Cavalry pants	4 50	93,366 00
Total				$4,683,585 46
Amount of net profits paid by Thomas F. Carhart to George Opdyke & Co., on the above contracts				$172,359 55

Cross-examined—The contracts were all fair, and were fully and faithfully executed; Opdyke advanced all the capital; the last delivery was made in June, 1863, to complete the contract of May 4, 1863; after that Opdyke had no interest in contracts whatever; we received in pay certificates of indebtedness, vouchers, and some money; the certificates bore interest for twelve months; the vouchers bore none; the vouchers sold in the market from about 92 to 96; up to the 25th of March, 1862, we received vouchers alone, und Opdyke had to carry fully a million of dollars; the contractors got nothing from the Government unless they sold these in market; after that they got part money and part certificates, and sometimes one-quarter, sometimes one-half money, or for small amounts sometimes all money; the certificates were always below par, say between 92¾ and 96 or 97,

Q. If they had sold these burdens in the market instead of carrying them, would there have been any profit at all on the contracts, and if so, what? A. I do not think there would have been any at all.

Q. Were any of these contracts obtained by Opdyke, or any member of his firm? A. No, sir.

Q. Was there any secrecy in the arrangement between you and Opdyke? A. No, sir; when I bought the goods, I did it generally on his credit, and had the bills sent in that firm.

Q. Were not such arrangements as these, to share the profits, very common? A. Yes, sir.

Q. Are there not eminent firms in New York engaged in that practice? (Objected to and excluded.)

Re-direct—The last settlement with the Government, I think, was on the 18th of August, 1863, but the mass had been closed before; I conducted all the purchases; as mall portion were with my own money; it was known that Opdyke was interested; there was no publication of the fact, except in buying and selling the goods; the sellers knew that he participated in the profits; I told them; I presume they did not know the shares; most of the purchasers were at 30 days; some at 60 and 90, and some cash; I got most of the contracts myself, at New York, Philadelphia, and Cincinnati, of the quartermasters—none at Washington; Opdyke gave his security in all cases; it was not required that the security should be other than a party interested, only that no member of Congress should be admitted; all the expenses, interest, &c., that Opdyke had charged, went in before the profits were ascertained; I believe Opdyke did obtain the contract for 16,000 infantry frock-coats; we received from 7-30s in payment, which were sold below par; that was the only case in which the securities were sacrificed by Opdyke; I had very little to do with the financial part; when I wanted money I went there and got it; we had a controversy about the 7-30s; I insisted upon their being sold; I think they brought about 99¾, and the quarter was charged into the account—properly so; I presume the certificates were not sold above par, they were not convertible.

Re-cross—We did not sacrifice the securities; the contract I got of Opdyke was the Churchill contract; I paid about one-fifth of the cost for the making up; we had large facilities for making clothing; our establishment is over the American Express Company in Hudson street.

TESTIMONY OF WM. B. COGSWELL.

WM. B. COGSWELL, sworn. Examined by counsel for defendant—I have been engaged about 11 years as a machinist; the depreciation in gun machinery in use from early in 1862 to July, 1863, would be from 50 to 60 per cent; the number of tool-makers required for 150 men, after being first finished, would be three or four.

Cross-examined—I am now master machinist at the Navy Yard, and superintend repairs and construction; I never made or used gun machinery; I know considerable about it; my estimate of the depreciation is based upon its being sold in the market, and not the value of it to the men using it.

TESTIMONY OF CHARLES P. HAUGHIAN.

CHARLES P. HAUGHIAN called by defendant.—I am a gun-maker; I have been such all my life, except nine months that I worked in a machine shop; the depreciation in gun machinery in use from early in 1862, to July, 1863, would be from 50 to 60 per cent; to keep machinery in repair for 150 men would require a great number of men, probably twenty; where the factory is supplied with tools it would need seven or eight men, may be more; I mean small tools and milling machinery, but not engine lathes; if the business was conducted by the day, and the proprietors agreed to keep up the tools, it would require twenty-five or thirty men; business is usally done by piece work; in that case the men keep up the tools; if it was conducted in that way in this establishment, it would require about three men to keep the tools up.

Cross-examined—If the guns are not made by piece work, it would require from twenty-five to thirty-five men where they turn out fifty guns a day. I never sold anything but separate parts of the machinery of an establishment.

TESTIMONY OF WM. THOMPSON.

WILLIAM THOMPSON, sworn. Examined by defendant's counsel—Am a machinist and tool-maker; have been since January, 1846.; I was engaged in this factory prior to the fire in July; on that day I was in the Armory, within 15 minutes of the time it was set on fire; I commenced work there in August, the year before; remained a month; was away until the following February, then went back, and remained there till the factory was burned; I knew a good deal of the condition of tools and machinery; in the first place, the tools were got up at the expense of the company, until the job was nearly ready to go on with, and then it was let by the piece to about six different parties; I took my job on the verbal agreement with Mr. Keene, the superintendant, that I should take the job as it stood, with the tools, I making any additional tools at my own expense, and they furnishing the stock and material; that was the case with the rest; it was the way in which the business was conducted.; I have got a book or memoranda of all the parts I completed up to the first of July, I first commenced contract for piece work on 13th April, 1863, and continued until the fire terminated it; I have a memorandum of what I expected to make the tools for on my job.

Q. At what price did you contract for in your work for the parts, for labor and finishing? A. The tip part was 10c.; trigger part, 20½c.; trigger 6c.; trigger part or lever-ketch, 4c.; barrel-spring, 3c.; ketch-spring, 1½c.; here were the actual prices paid me.

ADDITIONAL TESTIMONY OF HENRY D. STOVER.

HENRY D. STOVER, re-called—refers to the light bills put in evidence yesterday, headed "William W. Marston bought of the Stover Machine Co.;" these were not the bills paid; these are merely invoices that we send with goods; when we come to settle a receipt is given in the receipt book, and a settlement is then made according to the understanding at the commencement of the trade; sometimes we take off ten per cent. which would not appear on the invoices; these were not paid as they are here; we sold and delivered ten milling machines at $275 a piece, which I received pay for; there were five milling jaws sent at $20 each, four of which were returned and $80 credited.

Q. State the aggregate of money you received? A. $6,656.34.

Q. Do you know whether the statement you produced comprehends all the items in these eight bills? A. I do not know; it contains all I ever sold and got paid for. [Retires to compare the bills and his list.] These eight bills are on my list, but differ in amount; the eight invoices do not include all we supplied.

Cross-examined—The bill of March 22, 1862, 4 screw lathes, $691 was paid; the bill of February 24, 1862, engine lathe, 6 feet bed, &c., $255, was not paid as there; $230 was paid instead; bill of April 8, 1862, a milling machine and cartage, $279 was paid; the cartage was paid as a separate item; the bill of April 19, 1862, was all paid except the jaw.

Q. Will you say there was a deduction on any of the articles named in these eight bills, except the 7 feet bed, reduced from $255 to $230? A. I cannot; I would not swear to these at all until I went through them; milling machines can be worked without jaws; it is a usual thing to put jaws in; do not know whether Marston put on other jaws when they returned mine.

Q. (By juror). I understand you to say that the cost of milling machines was $275; did that include the cost of delivery at the factory? A. No sir; I testified as to what the machines were worth, not the extra cost for freights, &c.

Q. Since you were examined, the day before yesterday, did you reflect about my question to you as to your alleged conviction? Were you sentenced to pay a fine and be imprisoned? A. I was not to my knowledge.

Q. Do you know Charles B. Sedgwick? A. I do, very well; I know he gouged me out of $10,000 at the Fort, while another lawyer gouged me out of $25,000.

Q. You got out through Mr. Sedgwick? A. No, sir.

Re-direct.—Q. Tell us what you mean by Mr. Sedgwick getting money out of you while in the Fort? A. As I stated the other day, I was to Washington to attend to my business, and I got into a difficulty by detecting a fraud in the Boston Navy-Yard and reporting it to the Navy Department; I came home from Washington with Mr. Baker; he kept me three or four days, and started to go with me to see an officer at the Navy-yard, as he said; I had a nice over coat, which now would be worth $125; he said he had none, and borrowed mine; when we got to the Navy-yard, I was put on a tug and sent to the Fort; the next week Mr. Sedgwick came down to see me; he said that he had my release in his hands the Saturday before, and that Baker went back and told Captain Fox some very hard stories I had said in regard to him—when I never said one word against him or Secretary Welles in my life—right the reverse of that; that he (Mr. Sedgwick) was seen on Sunday night and taken to Secretary Welles and the release taken away because I had said something about Captain Fox; and afraid I should enlighten them in regard to frauds that had taken place, they thought it better to keep me there, where I would be perfectly safe and out of the way; he said I would be there only a few days—that they wanted to ascertain how much I knew; John H. Cheever had a power of attorney from me, connected with my interest in the Stover Machine Co.; Sedgwick went to Mr. Cheever, knowing he had a power of attorney, and collected in all from him $9,000 to pay Government officials to help me to get all right; D. M. Porter, a lawyer, knowing that I was coming out any way, came to the Fort, for the purpose of getting bonds for my appearance in the Henderson case, and said to me, "I shall have to have about $25,000 to fix these naval officers, or these officers." I said that looks to me as if it was pretty rough. Said he "I am your counsel, and have done considerable business for you, and you know I will not do anything wrong. Place the money in my hands, and I will expend it if necessary, and if not, I will pay it back to you." I said I wanted an agreement to that effect, and took one. In a few days I was released without any more cermony; and after a few weeks I began to ask Mr. Porter where my money had gone to; he said he was not prepared to tell me. He said he wanted to give part of it to Mr. Wilson, who was Assistant District Attorney at Washington, and had all these matters; he told another party that he wanted part of it to go Captain Fox in a roundabout way; he has got my money, and I came to the conclusion that I was put there to be fleeced by some one; I was kept in the Fort five months and four days.

ADDITIONAL TESTIMONY OF AINSWORTH BROWN.

AINSWORTH BROWN, re-called—Testified that the list produced by Mr. Stover was an exact transcript from the books of the account of Mr. Marston; that the goods there named were all delivered to Mr. Marston, charged to him and the account settled on that.

On cross-examination he said he only knew by the books; could not tell whether the bills shown had been paid, or not, except by the books.

Q. Was there a reduction made on any single article of the eight bills produced? A. Not to my knowledge.

TESTIMONY OF JAMES HAY.

JAMES HAY sworn. Examined by defendant's counsel:

Q. You are the gentleman named in connection with the Mariposa matter? A. Yes, sir.

Q. There was a sum of 5,000 shares of stock which were purchased by General Fremont at $25 a share, as stated by him. Do you remember that fact? A. Yes, sir, that was so; I think it was about October, 1863.

Q. That was a portion of the lot of 25,000 shares that had been in the hands of Mr. Ketchum? A. Yes, sir.

Q. Who made payment for that 5,000 shares? A. I did; I conducted the transaction.

Q. Who became owners of the 5,000 shares, and who contributed towards the payment?

Objected to. Defendant proposes to connect Mr. Opdyke with it. Allowed.

A. Mr. Ketchum paid me for one-third of it and Mr. Opdyke for one-third.

TESTIMONY OF CHARLES H. WARD.

CHARLES H. WARD sworn. Examined by defendant's counsel—I am a stock-broker and banker, of the firm of Ward & Co., No. 54 Wall street; I know the Mariposa stock; in 1863, the price of that stock in the market varied backward and forward from about 45 to 55; sales were made almost daily during the month—not in the stock-Board, but in general sales.

Cross-examined—I have sold a great deal of it; I am related by marriage to Mr. Billings, one of the proprietors, and in the formation of the estate held his power of at-

torney, and participated in the arrangement with his brother O. C. Billings; I think the stock was sold in the Board about the middle of October; previous to that it was sold in the street—not on the regular call of the Board, but was dealt in.

Q. What would be the effect on the market of throwing 25,000 shares on it? A. It would have knocked the stock very low—can't say how low—very close to 20 per cent. I think; the effect of putting a large quantity of any particular stock on the market is to depress it almost immediately very much; I think to have thrown 25,000 shares of Mariposa on the market would have depressed it 20 per cent.

MAJOR ROBERT TAYLOR INTRODUCED.

MAJOR ROBERT TAYLOR was introduced, and counsel for defendant proposed to prove that in his case there was a totally different mode in which his claim against the city for loss of arms was tried from that of Mr. Opdyke's; that he presented a claim, and it was presented to the same party (Mr. Blunt); that witnesses were examined and cross-examined upon it; the claim was cut down, and to this hour is unsettled.

THE COURT ruled out the testimony as irrelevant.

Counsel for defendant here rested, reserving the right to examine Mr. Reading, a member of the Committee appointed by the Supervisors' Committee to examine into claims.

PLAINTIFF'S CASE IN REBUTTAL.

TESTIMONY OF WILLIAM W. MARSTON.

WILLIAM W. MARSTON sworn and examined by plaintiff's counsel—My business is manufacturing arms; the paper produced is a bill of sale of the property, executed by me to George W. Farlee, dated December 1, 1862; it includes machinery, fixtures, tools, &c.; the Inventory mentioned in the bill of sale was taken by parties chosen by Mr. Farlee and myself, William L. Colby of the firm of Hoey & Co., and Mr. Charles Knowlton, who was previously connected with the factory; I had been conducting the business of the factory up to that time; I do not know what has become of the book called Schedule B.

[George W. Farlee was called to prove the loss of Schedule B. at time of the fire.]

WITNESS continued: This book produced is a copy of the original Inventory, Schedule B; it was written by my son, and I believe I called off the items from Schedule B; I know it to be correct; the machinery mentioned in the Inventory was in the factory at the time I sold it; I was present a good portion of the time the Inventory was taken; I think the total amount—the whole—was sold for something like $90,000, or for $91,000; that included all that was paid; there were debts and different things to be paid; to assist the appraisers in making the Inventory they had the original bills and access to the books and everything; there must have been four hundred feet of shafting altogether—four lengths; two lengths were purchased from the Stover Machine Company; Carpenter & Plass made one length and part of another, and I think the rest was made in the factory. The bills for the shafting was exhibited to the appraisers; there were pullies and anchors that were included in the bill of shafting. The stocking machinery in the stocking-room was made in the factory. Mr. Stover offered to make some of it. First I applied to Stover to make a portion of the machinery, and I think he said he would make it for $1.700, and have it completed in five weeks; at the end of that time I called and he had not commenced it; a week or two after he said he had given it to a man in Newark; I looked at it and did not like it; he then said it would cost $7,000: I told him that differed from what he said before; he then proposed to do it and charge by day's work; I concluded to make it myself.

Q. What was the value of that stocking machinery in your judgment? A. I think it was fully worth what I sold it for, any how; this was a special arm, and required special machinery; I was not able to get it; there never was machinery made to make a similar stock to that before.

Q. Do you understand a different thing by tools in a gun factory from tools in a gun shop? A. Certainly; we have tools in a factory for making machinery, and have gun tools, too; we got 15 or 16 lathes of Stover; there were additions put upon the lathes after they were purchased, which would make a difference in their value; I think that machinery was put in the Inventory at the price that I paid Stover; I have no doubt about it; the eight bills produced from the Stover Machine Company were paid without the deduction of one cent; these bills were sent with the machinery; the receipts were taken in a book; milling machines are those on which the parts are cut out to the shape required; they are of different prices, some small ones $100, some index machines as high as $550, and higher; the prices Mr. Stover gave did not include carting or setting up, but only the price of the article in his shop; I did not buy any spindled drills from Mr. Stover except one; the anvils were not bought of him; I think I paid 9 or 10 cents for the cast iron, and 16 or 18 for the wrought iron.

Q. Do you know what it cost to put up and adjust the counter shafting for the 65

machines put down here? A. I am satisfied it cost more than is charged, which I believe is $1,400; the machinery was in good condition when I sold it on December 1, 1862; if anything, it was in better condition than when I bought it, for after running machinery for a while it takes less power to drive it, and it does not heat up so quick; I think for use in the factory it was worth somewhat more than when new on that account, and somewhat more on account of the increase in price.

Q. Do you know the condition of it at the time of its destruction? A. Not positively; I was not in the factory for three or four months before it was burned up; the machinery seemed then to be in about as good condition as when I sold it; I know it was in good condition any new machinery, which certainly could not have been run any but what would improve it, from the time I was in there; when I was in there last, I observed everything going on systematically and in good order; Mr. Stover was not at the factory very often; I do not think he was there more than a dozen times; he might have been there twenty times.

Q. How much did Mr. Stover examine the machinery when he came there? A. He used to walk about; I can't tell how much he examined it.

At this point the Court adjourned to 10 o'clock to-morrow.

NINTH DAY.

FRIDAY, DECEMBER 23D, 1864.

TESTIMONY OF WILLIAM W. MARSTON, CONTINUED.

WILLIAM W. MARSTON—Examination resumed by plaintiff's counsel. I have seen the inventory which was presented to the city; a portion of that consists of tools, fixtures, and machinery, $67,000; that refers to the purchase from me; I have compared that Inventory with the Inventory made by Messrs. Colby and Knowlton, at the time of my sale to Farlee; I see one or two errors in it, or differences; in the former 4 punches are mentioned; in my Inventory three, making a difference of $30; in the Inventory to the city there is an omission of a mill mandril for tip, $40; and two sets of jaws, $65, which are in my Inventory; I find in the Inventory to the city one lathe at $325; that was a lathe agreed to be delivered to me, and I claimed it as my property, and got the money for it from the city myself.

Q. It was inserted in Mr. Farlee's claim through a mistake? A. I do not know how it was inserted there; I explained it to Mr. Blunt, and Mr. Farlee also explained it.

Q. How were the tools, fixtures, and machinery, examined by the appraisers? A. According to their judgment, with the examination of the books; they had every facility.

Q. Were they worth the price at which they were valued in the Inventory? A. I think they were, and more, too; I thought at the time they were worth more, and that I lost money; the total amount of the sale by me was $92,135 34; that included some stock on hand, tools, machinery and fixtures, rent and coal, and also $16,984 62, debts that were due on stock and machinery; I have not looked at the Inventory sufficiently to state how much was for machinery, how much for tools, &c., separately.

[The witness retired to make a calculation as to how much of the $20,000 was for machinery, how much for tools, &c.]

TESTIMONY OF WILLIAM J. COLBY.

WILLIAM J. COLBY, sworn and examined by plaintiff's counsel. I am a member of the firm of R. Hoe & Co., Machinists; we have establishments here, in Boston and London; we manufacture the power printing presses; have been engaged in the business of machinery twenty-five years or more; we have made a few gun tools; Mr. Knowlton and I made the appraisal between Marston and Farlee on the machinery and tools in the armory; it took us about six days; that was in November, 1862; we commenced with the machinery; we had access to the books, invoices, and the main part of the machinery was made up from these; we afterward commenced with the small tools spoken of in the Inventory; they were laid out in parcels; I valued one article, and Mr. Knowlton the next in rotation; sometimes we differed as to the value, and then we compromised; we made up the prices of the tools according to our knowledge, not from bills; we put down the cost on the principal machines at the cost in the bills; the Inventory was made up in duplicate—one delivered to Marston and one to Farlee; the tools in a gun factory differ from ordinary machinery quite considerably.

Q. Was there, or not, an advance on machinery from 1861 to 1863? A. I will say there

was an advance in the machinery of twenty per cent., from the time we made the Inventory (Dec., 1862) up to the time of the fire (July, 1863).

Q. Is machinery that has been in use from four to six months better or worse? A. It is better in my opinion; there is no depreciation at all, but a slight improvement.

Cross-examined—This last remark applies to running machinery, such as lathes, planers, shafting, etc.; it does not apply to cutters and files, or to tools, as distinguished from machinery.

Q. After machines have been used from four to six months, how is it with the next four or six months? A. After that there is a slight depreciation; how much depends on the care taken of the machinery.

Q. How is machinery affected by its use for six months or a year, in respect to its marketable value, for sale to the general purchaser? A. Probably, in that light, it would be twenty or twenty-five per cent. depreciated; I never made guns; we made some gun tools in 1861 or 1862.

Q. Did you do anything else in putting a price upon machinery (as distinguished from the tools), except to take the prices that had been paid for it? A. Nothing else; we had no bills for the tools; I put a price upon them that I thought it would cost to make them; I had nothing to do with the part of the schedule that comes under the head of accounts; I had nothing to do with valuing the stock on hand; it was only on machinery, tools, and fixtures; Mr. Knowlton and I examined the stocking room; we made out the valuation of the machinery, etc., there from our own observation; there were no bills to show; the building and carpenters' work I had nothing to do with; the putting up and adjusting counter shafting for sixty-five machines, $1,495, we made up; the machines were put up and taken down again in several instances, and replaced; this item of $1,495 included all that; we got at the matter by estimation as to what it had cost; this taking down and re-adjusting did not add to the value of the machinery, but it did to the value of the whole establishment.

TESTIMONY OF AUGUSTUS WEISMANN.

Augustus Weismann, sworn. Examined by counsel for plaintiff. In 1863 I was one of the Supervisors of New York and a member of the committee on riot claims; was appointed at the first meeting of the committee; the legal adviser of the Board was present; also the Mayor and all the members; Mr. Develin stated that he would not be able to be present, but he would send Thomas C. Fields; Mr. Fields then regularly appeared at the meetings of the Committee, and commenced the examination in a very rigid manner; the claim of Farlee was referred to Mr. Blunt, he having had a gun factory, and having expressed a wish to examine the claim, being better acquainted with the articles; I was not present during the examination by Blunt, on account ol sickness; at the time Farlee's claim came before the Committee, we had passed the Wakeman claim, and Blunt stated that he was ready to report; the members were all present, I believe; a conversation took place at the upper end of the table, which I did not distinctly understand, but I saw the Mayor rise and state that he considered it improper to remain when the claim of Farlee, in which he was interested, was before the Committee for consideration, and he left; I was at the upper end of the table, and that was the reason I did not distinctly hear: after the Mayor left, the real discussion about the claim commenced; various propositions were made for the purpose of cutting down the claim, as all other claims had been, and it would be improper to omit this when all the others had been so sharply and strongly treated; I favored cutting it down five per cent., or a per centage; Ely made a motion that it should be $199,700, a reduction of about $7,000; the Comptroller, I think, concurred, and it met the approval of nearly all the members, and was passed; it was subsequently passed by the Board, either unanimously, or with one dissenting voice, which might have been Mr. Purdy's.

Cross-examined. I had a long conversation with Blunt about the claim and the testimony; I asked him particularly how he got along with such a large claim; I also received information from different workmen, who were examined by Blunt and myself, regarding tools which were lost in the factory; I never examined the bill thoroughly; I looked over it and satisfied myself that it was a matter which I did not understand.

TESTIMONY OF CHARLES D. BIRDSEY.

Charles D. Birdsey, sworn. Examined by counsel for plaintiff. In 1863 I was employed as one of the examiners of riot claims by the Board of Supervisors; Reading and Lee were the other examiners; I was present when the claim of Farlee was brought before the committee for decision; I stood at the upper part of the room; Weismann was about the third from me; after the claim of Wakeman had been considered, the claim of Farlee came up, and Opdyke remarked that he thought it was improper for him to remain in the room, as he was interested in that claim, and left the room; I did not hear Thomas C. Fields make any suggestion about the Mayor's leaving, nor did I hear

Purdy suggest it; Purdy expressed himself perfectly satisfied with Blunt's examination and recommendation, he being more familiar with the matter than any other could be; Comptroller Brennan started after Opdyke to bring him back; I stood by Brennan at the time; just before he left, Opdyke said he did not expect his claim to receive any consideration different from what other claims had; that he would expect to see it treated in the same manner; that seemed to be with reference to cutting it down; I did not hear Fields make any protest, and I paid attention to what was said; if he made any, it must have been a side remark to one of the committee.

MR. EVARTS stated that the remark of Fields was at another meeting, and not the one at which this witness was present.

THE COURT said that he had got the impression that it was at this particular meeting that Field's testimony referred to.

WITNESS—There were several conversations on the committee at several times.

Cross-examined.—The session when the Farlee claim was passed occupied about an hour; I think I was there from the commencement to the close; it occupied about half an hour after the Mayor went out; the claim of Wakeman was acted on first, and that, perhaps, gave rise to the Mayor's remark about the treatment of this claim; Wakeman's claim probably suggested it; the Mayor stated that he requested the claim to be very carefully made out, and he did not expect it to be treated with any more consideration than others had been; nothing was said up to the time of his leaving about cutting it down; I remained, probably, for the purpose of walking up with Wiesmannn; it was a conversational meeting within the bar near the clerk's table; I was leaning against a post, and I think I heard all the public remarks, and some of the private remarks.

TESTIMONY OF RICHARD A. READING.

RICHARD A. READING, sworn. Examined by counsel for defendant (this is the witness that defendant's counsel reserved when they rested): I am a fire underwriter, and have been so since 1829; I was selected by the Supervisors as one of the fire committee; after the parties were examined and their witnesses, the claims came to us individually; my general course was just to look over the evidence already taken and the claim, and then I went to the parties, where there were accounts, and demand their books, papers, bills, vouchers, and everything necessary to elucidate the claim; from these I made up an estimate of the loss, and compared with the account presented, and either allowed or reduced it; generally they required reduction; I examined claims of machinery destroyed; Farlee's claim was not referred to us; I made no investigation; I looked over it.

Cross-examined. [illegible] were not presented to us: one-tenth certainly were; I have a general know[illegible] of the [illegible] been engaged in the examination of [illegible] about a year, and have a general [illegible] of all [illegible] towards such machinery, not particularly for gun machinery; there were no other claims for machinery that were not referred to the examiner, that I know of; there were four or five such items, three of which were referred to me; they were Harlem claims; one was to the claim of Ackerman for tools [illegible] factory that was referred to me; there were [illegible] a number of claims [illegible] there were referred to me; two of the Harlem claims were by [illegible] in the same row of buildings which were all destroyed.

TESTIMONY OF ORISON BLUNT.

ORISON BLUNT, sworn. Examined by counsel for plaintiff. For the last year I have been engaged in filling up the armies of the United States with volunteers and substitutes for this county; since 1854 was a member of the Board of Supervisors, with the exception of the years 1855 and 1856; I learned the business of manufacturing guns and pistols in 1832; I continued it until the year 1855, under the firm name of Blunt & Sims; I understood the mode of making guns in every part, and know every machine that is used at this day; I remember this claim; it came from the Comptroller; some claims were first sent to us; we sent them to the Comptroller, and then they came back to us I never knew Farlee before he presented himself before the committee to testify. Opdyke never spoke to me either directly or indirectly in any way whatever in regard to the claim, nor Farlee, nor any other person ever spoke to me on the merits of the claim; when it came up I was desirous that the entire committee should sit and hear it, as it was a large and important one; the committee discussed the matter at considerable length, and came to the conclusion that after they had heard it they would not know much more about it than before, and they said: "You hear it, and report it all to us;" I objected to doing it in that way, but they afterward insisted upon it, and I consented to hear it; it was before me from 9 to 12 days; Farlee was the first witness, Marston the second, and Keene the third; there were many others who testified in other cases, and as the committee were satisfied that the building was destroyed with all the property from those other witnesses, they did not go into that part of the evidence in

this case; there were claims for bench tools destroyed in this armory; think I examined Ackerman at very great length on the destruction of the building in his own case.

Q. Was all that was said by the witnesses written down in this claim? A. Farlee was examined at very great length; what I considered unimportant in the case was not put down—only what related directly to the case; I allowed the witness to tell his own story as long as he wished, and then directed the clerk, Hutchings, to put down such parts as applied to the case; the rest I considered there was no necessity of putting down; he put down just what he was told by me; this was so in regard to every other witness then the testimony was read over to the witness, and he signed and swore to it.

Q. Was the explanation full? A. I do not think that there was one-quarter that Farlee or Keene said that was put down; I questioned Keene very closely and extensively to learn whether he had any knowledge of these matters, and I was satisfied that he understood what he was talking about.

Q. What explanations, if any, were given to you about the value and quality of the machinery, tools, and guns? A. The first witness called on that point was Marston; I examined him at very great length on every item in the bill that was presented that the company bought of him, and I was satisfied, from the knowledge I had of the business, that every price that was charged—(Objected to as not responsive. Objection sustained). Witness proceeded: Marston showed me just what every item cost, and said that he had lost a large amount of money by selling these tools to the company—some $20,000 or $30,000, I think; that is, less than they cost him; I questioned him in regard to their condition when he sold them, to find out whether any of them were spoiled, and whether any of them were injured by being badly used.

Q. Were the prices fixed such as you judged, from your knowledge, to be proper and reasonable? A. There was no item charged in that bill but what I considered a just, fair and low price for such articles, at that time.

Q. State what was your examination of Mr. Keene? A. I examined Mr. Keene much longer than I did Mr. Marston; I examined him about the entire factory, as he was well acquainted with the entire factory, and Mr. Marston was not, inasmuch as there were other tools put in the factory after Mr. Farlee came and Mr. Marston had sold out; I examined Mr. Keene on every item that was purchased of Mr. Marston, in order that he should tell me the condition of the tools at the time they were purchased of Mr. Marston, —so that I should be satisfied that the tools purchased of Mr. Marston, together with the machines, were in good condition, and not spoiled by inferior workmen; I was satisfied that Mr. Keene understood the business thoroughly, and upon these investigations I was satisfied that the prices charged were fair, and that Mr. Keene well understood them; from the knowledge I had of the business, I was satisfied that the Committee had the whole story with regard to the worth and cost.

Q. State your examination of Mr. Farlee? A. I examined Mr. Farlee very thoroughly, as regarded the investment, &c.; he knew very little with regard to the machinery; I examined him very closely on the point of investment.

Q. Did you examine him about his ownership? A. When Mr. Farlee presented the claim to me it was the first time I ever saw him, and I asked him if it was his; he said it was; I asked him if there was any other claim on the concern, and I named Mr. Opdyke, the Mayor; he said he did not know of any other claim; that that was the entire claim; I told him I had been informed that there was $500,000 dollars invested in that factory, and this claim was only for $207,000; that I had a small claim presented for tools; that if there were any other claims I would like to have them all brought up together and examined at the same time; he said this was the only claim, except there might be some claim for small tools by mechanics.

Q. When you questioned Mr. Farlee about his ownership, did he exhibit to you a a bill of sale? A. He showed me a bill of sale from Mr. Marston to him, and that was the bill of sale I used before the Committee in order to ascertain what the goods cost him; I cannot state whether the paper here produced was the bill of sale; I made no mark upon it.

Q. Do you remember anything being said at the time about any one else being interested under him or with him? A. I told him I had understood that Mr. Opdyke owned the concern, and he showed me the bill of sale from Mr. Marston; I stated to Mr. Farlee that the object of the Committee was, first, to learn who owned the property —the next thing was the property destroyed; we had already understood, from witnesses in other cases, that the property was destroyed, and I did not wish to call any witnesses to that point; I stated to him that I wanted him to show what the property was worth.

Q. Did you at that time know, or had you heard Mr. Opdyke was interested in the establishment? A. I had heard more than fifty times that Mr. Opdyke had a large gun-factory on the corner of Twenty-second street and Second avenue, and was manufacturing guns for the government.

Q. Look at the last page of the account, and state whether that part of the account is, in your judgment, justly and properly made up or not? A. The first item is 500 patent Gibb's breech-loading carbines, finished, assembled, and ready to deliver, at $24 70 —$12.350; Mr. Keene was examined on that point and was examined at very great length and not one-eighth part of his testimony on that point was written down; I was satisfied his calculation was entirely correct; I agreed with him.

Q. Did you go over the calculations as to all these with him? A. No, sir; he stated that he had made the calculation, and stated how he made the calculation; I did not go into the calculation with him; I was satisfied that he understood how to do it just as well as myself, and I was satisfied to take his statement under oath; next item of 500, finished, ready to assemble, at $22 73, I examined Mr. Keene as to it; he went into the same calculation, in the same way, and I was satisfied his calculation was entirely correct; the next, of 1,000, all machined, filed and stocked, at $21 50; I went into an examination in regard to it, and found that his calculation was entirely correct; the same as to the next item of 1,000 machined, stocked, and not filed, at $19 12½, and the next two items of 1,000 each; on the item of 1,000 carbines, all forged and inspected, not matched, at $13 87; I examined Mr. Keene longer than any other; I arrived at how he made the calculation, and was satisfied that he was entirely correct, and that he under. stood what he was about; I know every stage of the manufacture of guns, and every part of the manufacture, and know how to do every part with my own hands; after I had taken the evidence down, I was satisfied; I then called all the committee together; after getting the committee together, I told them I had a very important case now, which I wished them to consider carefully and understand it, before they made any report upon it; I caused the evidence to be read over; I stated that the evidence which relates to the destruction of the factory had been taken in other cases, and we were all satisfied the building had been destroyed; I stated that there had been many things said which could not be written down and submitted to the committee; the case then came up to audit the same; I recommended the committee to audit the bill at the entire cost, as every article was worth the amount charged at the time it was lost; the Comptroller made a motion to reduce, which I opposed.

Q. Had it been laid over from the time it was first presented to the committee to another day? A. I forget about that.

Q. Do you know Thos. C. Fields? A. I do; he was sent to assist the committee by the Corporation Counsel; he attended and said he was desirous of doing anything that might be required, and the committee assigned Mr. Fields to such duties as they thought he could do; when he required a furlough they always gave it to him.

Q. Was that pretty often? A. Not oftener than the Committee would assent to; Mr. Fields generally asked me what case he should examine, and, as a general thing, I selected the case for him, and I think he did it very well.

Q. Do you remember, when this case came up before the committee, his insisting that it should be examined by Mr. Whitney, an engineer, and have a further examination? A. I never heard Mr. Fields or any man say any such thing; Mr. Fields said to me, before we finally passed the claim, that if I wished any more testimony or any more information on the point, he knew some one who was either a superintendent, or formerly had been, at Springfield; I stated to Mr. Fields that if the gentleman had been ever in this factory, or had any knowledge of this factory, I should be pleased to have his testimony; but inasmuch as he knew nothing of this factory I did not see that he could give the committee any more information than they had; that was the only conversation that ever came up.

Q. Did Mr. Fields object to the action of the committee on this claim? A. I never heard that Mr. Fields objected to the action on this claim or any other claim before the committee; nor do I think he did.

Q. Did he protest and say it was his duty on behalf of the city to suggest certain things in respect to it and that witnesses submitted to be examined on the other side, as all the witnesses examined were, with one exception, either agents or employes of Mr. Farlee? A. I have no knowledge of Mr. Fields, or any other person, making any such suggestion to me, or to the committee, or that I ever heard of it before.

Q. How happened Mayor Opdyke to be present when this claim was called up? A. At the appointment of the committee Mr. Purdy moved that the Mayor and Comptroller should be added to the committee; I opposed that, as they were not a part of the Board of Supervisors; the motion was withdrawn, and, after the committee organized, a resolution was passed inviting the Mayor and Comptroller to be present, in order that they should understand the evidence, and understand every case, as the Mayor had the power of vetoing and the Comptroller had power to audit it, after the Board of Supervisors passed the claim; I sent for the Mayor on this particular occasion, under the direction of Mr. Purdy; I sent for him three times on this occasion before he came; when he came up, Mr. Opdyke said he was interested in it, and would not stay, and he withdrew immediately; he was not two minutes about it; I think he said he should withdraw, and

to treat this claim as we did all others; after he withdrew the claim was considered, after a great deal of discussion Comptroller Brennan made a motion to reduce it; I opposed it; I said it was fair and just as it was, and ought not to be reduced one dollar; and that was my course on every claim; if it was unfair I was ready to reduce it to the last cent; it was finally reduced: Mr. Purdy opposed reducing it, and spoke at considerable length; he said that if they reduced the claims he could not sign the report.

Q. Are you acquainted with the value of machinery? A. I am with some.

Q. Was there any increase in the price of machinery from December 1, 1862, to July 13, 1863? A. My impression is there was a very large increase on all kinds of machinery during that time; I did not buy a steam engine during that time, but in consequence of the increased price of iron and scarcity of labor, I am perfectly satisfied the cost of making and setting up was increased.

Q. Do you know whether there was a great demand for fire-arms during that time? A. I know there was, and the supply was very small; I bought a milling machine at $140, which I sold some months after for $160; being in the business, and wanting to buy milling machines, I learned that they had advanced very much.

Cross-examined—The paper produced is the claim of Ackerman for carpenter's tools; I don't think there was any witness examined but himself; I ceased to be a gunmaker and dealer of guns in 1855; since 1856 I have been in the public service; I ran for Mayor in the fall of 1863; may have been nominated in October.

Q. Are you now a member of the bar? A. (Laughing.) I have not yet received my certificate; I believe I passed an examination and have been reported upon; the machine I spoke of as purchasing at $140 and selling at $160, was one I bought in Newark, N. J.; I always buy at the lowest market price, for cash; I sold it to W. J. Sims & Bro., my successors; they stated that they could not get one at the price, and needed it very much; the bargain was satisfactory to me.

Q. They were in a tight place? A. No, they were never in a tight place; I was never in a tight place in my life. (Laughter.)

Q. You know all about guns? A. I know a great deal about guns.

C. Do you know of any body that knows more about them? A. I think I know as much as any man about a gun; if there is any man that knows more, I don't know him to-day.

Q. Do you remember taking a machine to Washington to show—a sort of field gun, that turned a crank and raked a whole regiment? A. I remember going with a man to Washington and taking a rotary gun that would rake a whole line when it was all in perfect order; I exhibited it to the heads of all the various departments: I fired it myself and split it all to pieces while I was doing it, [laughter.] Mr. Lincoln, Mr. Welles, and I think twenty others were present.

Q. Did you split it on purpose? A. No, sir; I did not make the gun; it was made by a merchant, who knew nothing about the gun, and he made the parts of cast iron, instead of steel; I told him he ought to have known better than to make a gun to shoot out of cast iron, that was no better than corn-bread, [Laughter.] When it was made afterward, under my directions, it never split.

Q. You had a narrow escape? A. No, sir, there was no danger; I would undertake to split it every day the same way.

Q. It was a safe gun? A. No, sir, because it would not do to fire.

Q. Don't you think a gun that will not hurt any one, even when it bursts, a safe gun? [Laughter.] A. No, sir, it is a very unsafe one if you have the enemy in front of you.

Q. Does the testimony taken down, in your judgment, contain all that was material to the claim? A. It does. [Mr. Blunt was inquired of very minutely as to the basis or character of the evidence on which he reports favorably in regard to the several claims in the Inventory. He stated that on Keene's examination, the whole expense of the factory was divided up among the guns, in arriving at the cost. Keene put down the material at so much, the labor so much—the capital invested in tools and machinery so much—rent, and expenses of all kinds.]

Q. If the carbines, on that calculation had cost $1,000 a piece, that would have been your rule of allowing the claim against the city? A. If the claim came in in that way, if I had been satisfied there had been that investment made and that loss, I would have allowed it.

Q. You mean to say that the way these special prices were distributed to each class of guns was this—that the cost of the investment was appropriated to each lot, and divided among the number of that lot? A. Together with the expense of the factory—every cost connected with the factory on this first lot of guns; that was the way it was arrived at; the tariff paid the patentee was also considered; I was surprised the claim was so small, because the factory was represented to be so large.

Q. When this claim was passing through the Committee, did any one tell you the way it was arrived at was this; that they took the cost to make the carbine ready to deliver,

as fixed by the price the Government were to pay; then they took the incomplete carbine, counted how much additional labor it would take to make them complete, and deducted that from the full price? A. I have no recollection of any such statement having been made by any one before the Committee; neither do I think any such statement ever was made by any one.

Q. Did you understand that on Mr. Farlee's presentation of his claim, so far as it included what had come from Mr. Marston, it was a mere copy of the Inventory of prices at which he had bought from Marston? A. I do not recollect anything of that kind; I am under the impression that Mr. Marston stated that although his bill amounted to over $80,000 or $90,000 he was willing to take a certain amount for that—I think something like $67,000—and the difference was what Mr. Marston stated he had lost.

Q. This item of 29 tool hands for 72 weeks, $17,864—what evidence had you that that $17,864 had been burned up in this factory? A. Mr. Keene stated that they had a large number of men employed in making tools, adjusting machines, &c., for the purpose of making that gun; upon his statement I was satisfied that he had, and from the knowledge I had of the business of making these tools.

Q. Did you observe that, in this settlement for machinery, the city was paying for every machine and for every tool in this concern, bought of Marston, at the full price the machines and tools were charged at on the 1st December, 1862? A. I was aware that the items charged in this schedule were entirely correct; I asked both Marston and Keene if all the tools that had been broken were kept up, and they stated they were all kept up and in just as good condition as when purchased.

Q. The $67,000 covered tools on the notion that they had been kept up as good as when purchased? A. Yes.

Q. Look at the $17,000 item for tool hands, and see if that was not the wages of keeping up these tools as good as when they were bought? A. Some of it might have been—how much I don't know; I considered this a large item, and investigated it to my entire satisfaction.

Q. Take the item of partitions, closets, desks, drawers, etc.? A. The first item is for lumber; I was surprised at so much lumber, and asked if he had it on hand; I am certain I asked him on that particular point, and asked what they were doing with so much lumber; he said they had the lumber there, and I was satisfied.

Q. See if that item does not read, "lumber for the above, $463"—so that it could not be lumber on hand? A. Yes, that lumber must have been used up; but there was an item of lumber on hand. (Examined the list.) I do not see the item of lumber on hand.

Q. Were any witnesses examined except such as the claimant brought? A. None to this point except Keene, the claimant's foreman.

Q. Who acted as counsel on the part of the city? A. I heard the evidence and submitted it to the committee; that was the case with nearly all other claims; there were witnesses on prior claims who testified to the destruction of this building; the committee had to be satisfied of that; I did not know whether the witnesses were interested, I did not ask that question of any one; the committee relied upon me and the statements of the witnesses just as they made them; the testimony was all read by the clerk before the committee in session on the day they passed upon the claim; the schedule was looked at by each member, but the items were not read through; I think it took nearly all the afternoon to read it; the evidence was always read over before the committee, and I am sure it was on this occasion.

Q. What did Mr. Purdy say? A. He said he considered the claim just and fair, and he was opposed to reducing it one cent.

Q. Did he resign on the day it passed? A. He sent in his resignation on that day, and it was laid on the table.

Q. Did you understand he resigned because the $2,000 was struck off? A. Not in any way; he voted on its passage after it was re-considered; he voted against it before it was re-considered, and he indorsed it; my recollection is entirely distinct about this.

Q. What books did Farlee present? A. I asked for all the books, and they said that they had been burned; I think they presented all that had been saved; the cash book showing the outlay I think was presented; Farlee held it in his hand, and read from it; I was satisfied from his statements; I do not think I looked into it; he read it himself, and I think he stated that there was his cash amount; I understood him to testify what he had invested from the book, and I was satisfied from the amount invested in regard to the cost of the guns.

Q. When the cash book was produced and the statements aggregated and testified to, was anything said about $28,000 having been received back from the Government of the United States? A. There was not one cent; I asked him distinctly if there had been any money received from the Government, and it was stated that there had not, inasmuch as there had been no guns delivered—that they were ready to be delivered, but had not been receipted for.

Re-direct—[Inventory shown]—Marston presented himself with a book something like this; there was an item of lumber $1,476; I asked him what he was doing with all that lumber; the item charged in the bill is $463; I knew there was a large amount for lumber somewhere in the schedule, and this $1,476 is the one I had in my recollection when I read it before under the head of lumber; I never read this schedule over since I passed the report; I was surprised to find so much lumber, and Marston explained it to me to my entire satisfaction; the other lumber is what was worked into closets, drawers, partitions, &c., after Marston sold out, as appears here; I never understood that the claim was made for any other articles, except for some small tools claimed by workmen in the factory; I directed every claim to be advertised in a number of papers of the largest circulation, a number of days, on what particular day it would be heard, and I think this was so advertised.

Q. What was the cause of Purdy's resignation? A. He can tell; I don't think I ought to tell any private conversation here.

Q. Had it anything to do with this gun claim? A. Not in the least; it was in reference to a loss claimed by a relation of his—a nephew I think.

Q. How many separate pieces are there in this gun, and how many sets of tools are required for each piece? At a guess I should say there are 25 or 26 pieces, requiring from 4 to 12 tools each; I call the cutting mills tools.

Q. Are breakage and waste a part of the cost of production? A. So I always understood, and I have never come across any one who did not so consider it.

Q. According to your judgment, would 29 tool hands be required for such a factory as this? A. All the fixtures and many of the machines to do certain work are made in the factory, by the tool hands, and if all the tools were made in the factory it would take a great many more than the number charged to do that work; it was stated that these men were employed as tool hands; I believed it and allowed accordingly.

Q. In what order were these riot claims taken up? A. The committee first took up the small claims, especially of colored people; after passing some 800 I proposed to drop them and take up the large ones; then between times we examined the small claims; some we disposed of in five minutes; we heard some days as many as forty; I would hear a man's statement for loss of time about three minutes, let him swear to it, and there was an end to it; we did not allow such claims.

Q. What is the cost of getting up an establishment to manufacture such carbines at the rate of fifty a day? A. $300,000 or $400,000 would be a moderate investment at this time; I consider the enterprise as a very hazardous one, and if I had an order for 10,000 only for military service I would not go into it any how; it would be impossible to make any money by it with no further orders.

Re-cross-examined—If my factory was burned while turning out the second thousand, I should calculate to get every cent I put in, but I would not start with an order for ten. nor twenty, nor 50,000; I would have expected an Insurance Company to pay every cent I put into it; I should expect to lose very heavily at the end of an order for 10,000; probably nearer 90 per cent. than of 75 of the first cost would have been sunk; there were plenty of claims for labor lost in consequence of being thrown out of employment, which I would hear and reject in the time I am telling you; there were claims also where men were looking on and were knocked down and robbed of their watches; we did not think the laborers had lost anything when nothing was burned up; I think the most urgent claim was that of a boarding-house keeper, and she was shown to have been rich; breakage and waste make up the cost of putting the articles in the market; articles fetch more or less than the cost; I have bought United States muskets often for 60 cents.

Re-direct—Q. If you had had a contract for 10,000 carbines, and it was certain that the profit would be $20,000, and the factory burned down after 2,000 were made, would you think you had indemnity at the price of old iron or of the parts on hand? A. No, sir; I would not have submitted to it without going through all the courts in the country.

Q. If you rejected a claim on such grounds would you expect the city to be sued? A. I should.

Re-cross-examination—Q. Is it a supposable contract to make 10 or 20,000 guns? A. At what price? [Laughter.]

TESTIMONY OF THOMAS C. ACTON.

THOMAS C. ACTON sworn; examined by counsel for plaintiff: I am one of the Commissioners of police, and was such in 1863; Mr. Bergen was the other on the 13th of July. About noon an order was issued to concentrate the police at the headquarters in Mulberry street, that was after the burning of the buildings in Forty-sixth street, the Provost Marshal's office, and the injury to Superintendent Kennedy; the Mayor had no power over the police.

Cross-examined—I gave orders to send assistance to all places where there were arms or ammunition; the authority of the Mayor to order out the military was well

understood; we had the same power; Opdyke's house was in Fifth avenue, and we sent a force to protect that, and kept it there several days.

Re-direct—I understood the Mayor made a requisition for the military force; we made a requisition on Monday about noon on General Sandford; General Harvey Brown first brought three companies of United States Regulars; I did not see General Sandford's troops till Thursday; they were under my orders when the Governor gave orders to that effect; the Seventh Regiment was coming home and was under General Sandford's orders.

TESTIMONY OF WM. W. MARSTON CONTINUED.

WM. W. MARSTON—*Direct examination resumed by counsel for plaintiff.*—I have looked over the items in the sale for $92,000, and I find that $62,675.91 were for machinery and tools; $4,386.52 for work on the twenty-five model guns, for lumber, hardware, curtains, buildings, carpenter-work, and blacksmith shop (this I did not and do not now count among machinery and tools; $20,266.04 for stock (that does not appear in the printed claim); then the note of Brooks which I made over was $2,168; then for rent, gas, insurance, and coal, $2,618.65 (this was reduced); the whole amount making $92,135.02, as I have figured it up.

Cross-examined—The stock is mixed up in the account; it was estimated at the price I sold it at; I am satisfied it cost no more; the stock I could get at, the machinery and tools were consumed; the appraisers put their valuation on the tools; a good part of which I made; others that I bought were put in at the price paid for; the 5,000 gun stocks, at 13 cents each, were in the factory when I sold out; there were gun barrels there that do not appear in the account; the amount paid to the makers was put down (it was stated approximately amounting to $3,375), the item of work charged on 25 guns, $2,500 came in this way; there had been a great deal of time consumed in getting the tools ready, and the time for delivery had passed; Farlee was urgent that some guns should be made for delivery; I told him if it was necessary to go out of the general routine, it would put things back very much and cost a great deal; Opdyke said it made no difference what it cost. everything else must stop for that; the foreman considered that they cost that much in consequence of the delay, and I have no doubt they did; they were not finished, though much more was not required about them; I question whether they could have been delivered to the Government under the contract; the material was good, and I think they were perfectly safe to shoot with; they would have been serviceable if they had been properly put together, but they were fussed about a good deal.

Q. What did you get your pay in for the establishment? A. Opdyke had advanced to me $67,699.58; interest $1,576.43; then I had from McNeil $2,500; then a note of McNeil, which Opdyke discounted or paid, $2,000; then my indebtedness was $16,948.62; all that made $90,720.63, which was the payment I got; I was a debtor for all that money, except the $2,000.

Q. What was the condition of the business as respects its value in regard to the money put into it? (Objected to—objection overruled). A. I considered that the full value was there.

Q. What was the profit expected on the manufacture of the 10,000 guns? (Objected to—objection overruled). A. If there had been no more there would have been a great loss; I think the equipment was pretty much complete.

Q. On the 1st of December, 1862, what number of tool hands would be required up to July to keep up the equipment and tools? (Objected to as new affirmative evidence—objection sustained—exception taken.)

Adjourned till Tuesday, December 27, at 10 o'clock.

TENTH DAY.

TUESDAY, DECEMBER 27TH, 1864.

TESTIMONY OF WILLIAM W. MARSTON CONTINUED.

WM. W. MARSTON—*Cross-examination resumed by counsel for defendant.*—The stocking machinery, patterns, &c., amounting to $9,669, were all made in the establishment; there were no invoices of the cost of these; they would be worth this amount to parties continuing the same manufacture; the first idea in starting the factory, was to have a great many of the parts made outside; we soon departed from that plan; we found it cost six times as much as we had calculated to carry on the concern; before I sold out, Opdyke expressed himself willing to get out of it at five or ten thousand dollars loss; the model, or pattern gun, charged $500 dollars, is a necessary thing; it is made by hand,

and generally costs more than that; it is a standard gun; Farlee is mistaken in his testimony that he was charged $3,000; the $67,000 in the bill embraces the same articles that Farlee states in his testimony, before the committee, cost him $76,000. (Counsel for plaintiff stated that this was explained by consumption.)

Re-direct—I made the bargain to sell out with Opdyke, but I sold to Farlee; I lost over $10,000 before I sold out; when I left, we were not turning out any guns—the arrangements were not completed.

Re-cross—I got exactly what the machinery, tools, &c., cost; if I had gone on and completed the contract, without any further jobs, I should have lost something.

TESTIMONY OF JOHN CAMERON.

JOHN CAMERON, sworn: Examined by counsel for plaintiff. I am Captain of the police; I commanded in the Eighteenth Preciuct in July, 1863; I sent men to protect this armory; gentlemen from the armory came and requested me to send policemen; I did so; about noon, workmen from other factories complained that they were not protected; I advised the foreman of this factory to dismiss his men and shut up the factory; I sent to headquarters for more aid; at one o'clock a number of men came; I sent them to the factory, but in the afternoon I was informed that it was impossible to hold the factory; I sent men in disguise to order the men to get out of the factory, and they did withdraw in the rear; I telegraphed to the central office that it was impossible to hold the factory, and Inspector Carpenter telegraphed back to withdraw the men; and neither Opdyke nor any other one connected with the factory requested such withdrawal.

Cross-examined—I judged that it was impossible to hold the factory from the number of the crowd; Sergeant Benedict sent me that word; Jones told me he could hold it by arming the police, but I saw the mob could get on the roof; the factory was burned about 4½ o'clock, soon after the men were withdrawn.

TESTIMONY OF CORNS. BURDICK.

CORNS. BURDICK, sworn: Examined by Counsel for plaintiff.—I am Captain of the police; in 1863 I was sergeant, and had command of the Broadway squad on the 13th of July; I was ordered to the Eighteenth Precinct at 12 o'clock by Inspector Carpenter, to report to Capt. Cameron, with 30 men; Capt. Cameron ordered us to the armory; the mob came; we armed ourselves with carbines, they attacked, we fired, and I understand a man was killed; after some time Sergeant Buckman brought a communication from Capt. Cameron to withdraw; he came in disguise; we withdrew at the rear, going through a very small hole; at that time it would have been instant death, in my opinion, to have attempted to get away in front; I went and reported to Capt. Cameron, and then went to my station in Mulberry street.

Cross-examined.—We were there about half an hour before the attack was made; we had twenty-four rounds of ammunition; we protected ourselves by firing; the firing stunned the mob, but they soon rallied in greater force; we were there four or five hours; the mob took the doors and every window below; they did not enter the first floor; I don't know whether they entered the basement; I think we fired but one volley; there might have been some other shots fired; I sent word to Capt. Cameron that I could not hold the armory without reinforcements, and he sent back word to withdraw, as he could not get assistance then.

TESTIMONY OF FRANCIS J. BANFIELD.

FRANCIS J. BANFIELD, sworn: Examined by counsel for plaintiff. I was sergeant of police in July, 1863; I went in citizens' clothes and mingled with the rioters before this armory; I learned that they determined to make the men quit work, as this was the only establishment in the neighborhood where the men were at work; I went and so reported to the Captain; he ordered me to notify the parties in charge that they had better knock off the workmen; the foreman said he could hold the building; finally they knocked off; I should think there were three thousand in the mob; the street was blocked up on Second avenue; I saw two men get up on the liquor store adjoining and reach the roof of the factory; I learned that they intended to fire the place and burn out the policemen for shooting their men; they also threatened the station-house; I gave that information to the Captain; he thought I had better get the men out; so Buckman and I went disguised, and entered by the rear on Twenty-first street; it would have been impossible for policemen to show themselves in the street; our men came in bleeding; it would have been impossible to save the building; the men withdrew from the building, one at a time, through vacant lots, to the station-house, one every two or three minutes.

Cross-examined—I was not in the armory when the volley was fired; the firing exasperated the mob; we sent out men to take the victims to the hospital; the first time they succeeded; the second time the mob attacked them; they were in uniform; the rioters said they were going to get arms there.

TESTIMONY OF B. E. BUCKMAN.

BENJAMIN E. BUCKMAN, sworn: Examined by counsel for plaintiff. I was sergeant of the Eighteenth Precinct in July, 1863; about two o'clock I was ordered to repair to the Eighteenth Precinct; I arrived there about three; word came that the police could not hold the armory; I said I would take the risk of going; Banfield and I went through a private house in citizen's dress; at first the ladies shut the door on us; we explained who we were; I got out to the rear, and attracted the attention of sergeant Burdick; I thought he was going to shoot me; he recognized me, and I told them where they could escape; they went out, one at a time; there was a solid mob in Second avenue, between Twenty-first and Twenty-second streets; some 1,500 or 2,000 passed our station-house, armed with clubs, with a chunk of iron apparently on the end.

Cross-examined—I did not see the mob enter the armory.

W. W. MARSTON RECALLED.

WILLIAM W. MARSTON, recalled by counsel for defendant. (Rough-turned gun-stock submitted.) This is similar to the Gibbs carbine-stock; it costs from six to ten cents to turn the stocks as this is; ours were simply sawed out, those that were charged fifteen cents.

TESTIMONY OF J. L. VOSBURG.

JOHN L. VOSBURG sworn: Examined by counsel for plaintiff. I was sergeant of police, Eighteenth Precinct, in July, 1863; I was at the Station-house about one or two o'clock; after four o'clock I received an order from the central office to withdraw the men; I think it was impossible to hold the armory, judging from what I heard from citizens.

MR. FIELD moved for an instant commission to examine the Secretary of the Navy for the purpose of producing a copy of the record of a conviction and sentence of Mr. Stover, a witness in this cause called by the defendant, by a naval court-martial for a criminal offence. The object was to impeach the witness' testimony.

MR. EVARTS objected, that it was a colateral subject.

The Court allowed the order.

TESTIMONY OF JAMES MALLETTE.

JAMES MALLETTE sworn: Examined by counsel for plaintiff. I was connected with the city department of the Evening Post, in July, 1863; the paper now shown me is the New York Herald, of the 14th of July, 1863.

MR. FIELD offered the paper in evidence for the purpose of showing that it was known publicly that Mr. Opdyke was interested in this armory.

Objected to, and objection overruled.

MR. FIELD read an editorial, stating that the armory was owned by Mr. Opdyke and his brother-in-law. The Tribune, of July 15, was identified, in which the armory was stated to be Mr. Opdyke's factory. Also the New York Dispatch, of July 19, to the same effect. The Evening Post, of August 22, was offered, but excluded.

Q. State whether there was published in the Evening Post an article in which the ownership of this claim was stated?

Objected to; objection overruled; exception taken.

Q. Did you ask any information of the plaintiff in regard to the ownership, and if so, when? A. I did so, in August or September, 1863.

Q. What information did he give you for publication? (Objected to; objection overruled; exception taken.) A. He said the claim would amount to something more than $200,000, and it would be presented in the name of Farlee, who had conducted the business; that part of the claim belonged to him, as he had furnished the capital, or a large part of it; he gave me the items; one article was written by me; the Evening Post, of September 10, containing the items of the claim, was published in consequence of the information I received; there was one article published previously containing similar information.

MR. FIELD offered the article in evidence. (Objected to; objection overruled.) The article stated that the claim of Mr. Farlee was about to be presented to the city, though Mr. Opdyke, having furnished the capital, was understood to be concerned in the loss. The amount of the claim was stated to be $207,000. Six thousand carbines had been stated to have been taken by the mob, but it would be seen that only one thousand were obtained. The machinery and fixtures were stated at $97,000.

Cross-examined—I either wrote or revised the previous article; I got the information from the Mayor at his office; I got a paper statement at the office, either from the Mayor or from his son, or from some other person present; I went there because I desired correct information, and I supposed he was in a condition to give it; there had been many stories; the material part that I recollect distinctly was what the Mayor told me.

Mr. EMOTT stated that he had finished the interrogatories for the commission to examine the Secretary of the Navy.

Mr. EVARTS said he would put in the cross-interrogatories to-day, but could not do so before four o'clock.

Counsel for plaintiff wished to get the record by Friday.

TESTIMONY OF GEORGE W. FARLEE.

GEORGE W. FARLEE, called by counsel for plaintiff.—I am the son-in-law of the plaintiff, and the person to whom this bill of sale was executed, in December, 1862, from Marston; previously I had a contract with Marston to make 10,000 carbines; the contract was obtained June 1, 1862, by Mr. Brooks, of the United States Government; (contract read in evidence; contract between Brooks and Farlee, dated June 25, 1862, also identified and read in evidence, for the fulfillment of the aforementioned contract); there was only one delivery made within the time prescribed, and an extension of the contract was procured from the department (extension order proved and read in evidence, allowing six months, provided the price of the carbines be reduced from $28 to $25); there was then a verbal arrangement made between me and Brooks reducing the royalty from $6.50 to $3.50.

Q. State the terms of sale to you by Marston. A. He selected each as an appraiser; the book now shown contains the appraisment; the inventory was destroyed; the $92,000 was paid by canceling notes held against Marston, and Mr. Opdyke's cashing a note of McNeil and assuming certain indebtedness of Marston; Opdyke, Mr. McNeil and myself became jointly interested; I took possession and was there every day; we were several months completing the equipment so as to make guns; there were a large number employed in making tools; we probably turned out a few guns in May; not until a few days before the fire did we turn out fifty a day, which we considered the full capacity; prior to December, Mr. Finch was book-keeper; after December, Mr. Paret kept them.

Q. Did you make any suggestion on the day of the riot that you wanted the armory burned? A. I did not.

Q. Did you hear Opdyke make any suggestion to the Police Department that they should leave the armory undefended? A. I did not.

Q. Did you do anything in the way of defending the armory; if so, what? A. I had been at the armory in the morning, and reached the City Hall about twelve o'clock; I there learned that the mob up town was large and determined, and it occurred to me that the armory would be in danger; I saw the Mayor in consultation with Generals Wool and Sandford; I suggested that our armory was a prominent point of attack, and as we had 500 arms finished, I asked permission to arm the men; Opdyke said I could do it; I immediately turned to Gen. Wool, and asked whether he concurred in it; I heard him say he did; Opdyke turned to me and said: "Hold the citadel, and shoot down any one who attacks it;" directly after that I went up to the armory and entered it; I found some thirty policemen, and learned that word had been sent to stop our work; I conversed with Paret about it, and we thought we would continue the work; but directly after that, in about fifteen or twenty minutes, I made up my mind it would be prudent to stop; I did so, and gave directions to have the police armed; I was informed that we had received that morning a quantity of cartridges; I remained there about an hour; we had had no premeditated attack as yet; I went and mingled with the crowd about half an hour; I moved down to the corner of Twenty-first street and Second avenue; while there, the mob, which heretofore was in squads of 25 to 100 or more, became a dense mass, and they moved toward the upper part of the armory; I saw a man striking the panel of the door, and heard the discharge of a carbine; the mob then swayed back; in three or four minutes two men came up and assisted a man across the street; directly afterward they went and picked up another on the platform; he was concealed from my view by a fence; I sauntered along with the crowd; after this shot was fired, I would not have attempted to enter the building; before that I had intended to enter it; finding I could do no good there, I went down to the Mayor's office and reported to the Mayor the facts, but said that there was a large police force there, and no doubt they would hold the building; the Mayor left, and I remained to hear anything further, feeling that that would be a point to which information would naturally come; about a quarter past four o'clock Loren Jones came in and said that the policemen had been withdrawn; presently I met Mr. Paret, who said, "It is all up."

Q. How was Loren Jones employed by you? A. He did simple errands; we would give him $50 at a time to buy small articles; he had no interest in the factory except a contingent one under McNeil, as I understood; he was not superintendent.

Q. How many carbines had then been delivered to the government? A. One thousand and fifty-two were delivered and paid for—550 at $28, and the rest at $24.80—in June; two were models; on the 13th of July there were 500 ready to deliver; I knew them to be inspected.

Q. Who directed the sale of the debris? A. It was made under my direction; Paret took charge of it; I understood it was at the Comptroller's suggestion.

Q. Was there a suit commenced against the city? A. There was, and this claim was sent to the Comptroller besides.

Q. How did you make up the claim? A. The first part consisted of machinery, tools, fixtures and articles on hand, which appeared in Marston's inventory, but which did not enter into the composition of the guns; it amounted to $67,093; the charges for machinery were taken from charges in the cash-book; the charge of $17,000 for tool hands is a matter I had no knowledge of; it was made up by Paret and Keene from their recollection of what the men did; the lumber was got at from the cash-book; the hardware also; all our memoranda were destroyed besides the cash-book; the detailed drawings for which we charged $200, cost us, we believed, $500; there was a reduction on some articles; I had always an impression that the model gun was charged $3,000, until I got Marston's schedule within the past three weeks; I find I was mistaken in my testimony in that particular; I understood from many gun men that a model gun was very expensive, and had heard it rated at $10,000 or $12,000; the carbines were reduced to $25 each; I find from Marston's books that more lumber was used than charged for, and the same in regard to carpenter work; all the items in Marston's schedule as per bill or inventory, I examined myself after the appraisers, and saw the bills, receipts and entries; I verified all those bills; the claim was made up according to my best judgment and belief at the time.

Q. Was this an honest account? (Objected to; objection overruled.) A. I so considered and intended it to be.

Q. You had not any dishonest motive? A. No, sir.

Q. Do you know of anybody connected with the claim that had any dishonest motive? (Objected to. Objection sustained.)

Q. Did you believe it was an honest way of making up the claim for the finished and unfinished carbines, in the way you did? A. I did so and I do now; I made it on the principle of taking the price at which the gun had been sold for, and deducting therefrom the cost of finishing.

Q. During the making up of the claim, did you have any conference with Mr. Opdyke, and if so, what was said? A. On two occasions we conferred quite at length. (Objected to—objection overruled.) Mr. Opdyke said we should be exceedingly cautious, and get it below rather than above the actual cost.

Q. State now about the evidence given before the Board of Supervisors? A. I first took the stand, and when we came to the guns, I said to Mr. Blunt that the claim represented the Government price less what it cost to finish the guns; Mr. Blunt said the cost was what he wanted to get at; the testimony was not all taken down by any means; I never used the words "I am the entire owner of the claim;" what I did say was responsive to the question of Mr. Blunt, if I was the owner of the claim; I said yes; he then asked me whether there were not other parties in interest; in reply to that I presented my bill of sale, and said the business had been done in my name, and the contracts had been made by me; and I believed that sufficient evidence of my title; and it was not pertinent to inquire into special interests that other parties might have; he said, "That will do;" I explained to him the cost of the claim; I knew that our costs and liabilities exceeded the amount of our claim, deducting what we had received from the Government.

Q. Have you any means of stating every item of expenditure? A. I have; I have here the checks of Mr. Opdyke, or his firm, for that purpose; also a list of them, some 200; I have an account, made up from the checks and cash book, together with the advances to Marston; about which I have testified; I know it to be correct. [Account offered in evidence, and admitted subsequent to defendant's objection.]

Profit and Loss Account of Armory, as it appeared when claim was presented to the Supervisors.

	DR.	
To amount advanced W. W. Marston, to December 1, 1862	$68,129 02	
To 117 days' interest to December 1, 1862	1,576 42	
		$69,705 44
To other amounts advanced by Mr. Opdyke for armory to July 13, 1863, including, also, several small payments from that date up to Aug. 14, 1863		128,368 61
To interest on the above amounts, from December 1, 1862, to October 28, 1863, averaging 252 days		9,705 62
To amount advanced by McNeil	$6,250 00	
To interest on same to October 28, 1863	1,035 93	
		7,285 93
Carried forward		$215,065 60

Brought forward		$215,065 60
Add liabilities, viz :		
E. Remington and Sons' claim, subject to adjustment, and subsequently settled at $4,492.90		5,142 67
Claim of patentees for tariff on royalty, amounting to $26,332.00, on which $11,308.54 had been paid, subject to adjustment, and subsequently settled at $5,000		15,023 46
Balance due on McNeil's note to Marston		1,100 00
Bill of steel, New York Steel Company		100 00
Unadjusted liability on contract with E. Remington & Sons, for barrels, and with P. B. Tyler for cones, subsequently waived		
Total		$236,431 73

CR.

1863—By receipts from all sources, viz :		
June 30—By cash from United States Government, on first delivery of carbines	$15,379 50	
June 30—By 120 days' interest on same to October 28, 1863	358 84	
Sept. 11—By cash from United States Government, on second delivery of carbines	12,615 75	
Sept. 11—By 47 days' interest on same to October 28, 1863	115 29	
		28,469 38
Total		$207,962 35

MEM.—McNeil's advances, together with the estimated profits, were paid to Henderson, assignee, on the 28th of November, 1864, amounting to $11,252.35.

Profit and Loss Account of Armory as it was finally closed.

DR.

To amount advanced W. W. Marston by Mr. Opdyke, to December 1, 1862	$68,129 02	
One hundred and seventeen days' interest, to December 1, 1862	1,576 42	
		$69,705 44
Other amounts advanced by Mr. Opdyke for armory, to July 13, 1863, including also several small payments from that date up to August 14, 1863		128,368 61
Interest on the above amounts from December 1, 1862, to October 28, 1863, averaging 252 days		9,705 62
Amounts advanced by Mr. McNiel	$6,250 00	
Interest on the same to October 28, 1863	1,035 93	
		7,285 93
And liabilities as subsequently settled, viz.:		
E. Remington & Sons' claim of $5,142.67. Subsequently settled at		4,482 90
Claims of patentee for balance due for tariff or royalty on carbines, amounting to $15,023.46. Subsequently settled at		5,000 00
Balance due on McNiel's note to Marston—paid him		1,110 00
Claim of New York Steel Co., paid		100 00
Amount paid Hendrickson, McNiel's assignee, for estimated gross on the entire enterprise	3,966 42	
		229,724 92

CR.

1863.—By receipts from all sources.		
June 30—Cash from United States Government for first delivery of carbines	$15,379 50	
June 30—One hundred and twenty days' interest on same, to October 28, 1863	358 84	
Sept. 11—Cash from United States Government for second delivery of carbines	12,615 75	
Sept. 11—Forty-seven days' interest on same, to October 28, 1863	115 29	
Cash from County	199,700 00	
		228,169 38
Total		$1,555 54

MEM.—The above amount of net loss does not embrace the large sum lost by the depreciation of the currency while the capital was invested in the armory; nor does it include the $10,000 lost by Mr. Marston.

Q. In this account from the debit there is deducted the whole amount received from the Government? A. Certainly; always deducted in every calculation.

Q. Was Marston's inventory exhibited to the Supervisors? A. It was; Mr. Hutchings was there as security; Mr. Field was in another part of the room examining a case; Messrs. Purdy and Ely were present; I recollect Mr. Blunt's calling them up to listen when Keene was examined concerning the various armories of the United States; Blunt said to them: "I would like you to get some idea what it costs to make guns."

Q. After your claim was paid did you have any interview with Brooks, the patentee? if so, state what occurred. (Objected to as having been ruled out when defendant offered the same evidence.)

MR. FIELD stated what he expected to prove in regard to the settlement for the royalty.

The Court considered it of no consequence.

MR. EVARTS thought it admissible, and the Court allowed it.

WITNESS—The first intimation I had about the matter was a note left at my office, from Brooks, stating that he had called two or three times without finding me in, and he wished me to call at his office and settle his claim; I went to his office and wished to know what his claim was; he showed me a statement claiming $6.50 on 3,500 guns, and $3.50 on 6,500; I replied that I thought that was a matter for consideration and negotiation, that our claim had been cut down, and it could certainly be for nothing else but guns, because the other matter was perfectly apparent; and, besides, we really had made no money on the contract; if we had, it would be on the guns which we would have subsequently delivered, of the 10,000; "Well," he says, "you have got it from the Government and the city, and you have got to pay me;" I left; two or three days after that he came into my office to know if I was going to do anything further; I told him I thought not on that basis, it was not equitable; I wanted to do what was right and fair, and asked him if he had not any other proposition; he said he had not, and if we would not settle that way he would sue us; I anticipated a law-suit and reported to Opdyke accordingly; he then asked me to have a meeting at his house; I had one and invited that evening, and we three were present; about the same argument was used; Brooks finally consented to take $10,000; Opdyke offered $5,000, and we parted at that; about a week after that Brooks called at my office, feeling pretty good, and said he wanted this matter closed up, and said he would take $5000 if I would settle it, and he gave me a release.

Q. How much had you paid the patentee altogether? A. $16,332, including this $5,000.

Q. Was this a good carbine, and was it contemplated to go on with the manufacture after the fulfillment of this contract with the Government? (Objected to—objection overruled. Exception taken.) A. We made inquiries in regard to the desirableness of this as a gun for the general trade; I consulted the best authorities I could find—among others Lawrence, who makes the Sharp carbines, and got a very high opinion of it from him; it was our idea, when we bought out Marston, to go on, if we got no further order from the Government, and make the gun for the trade; we also got a contract with Brooks to control it.

Q. After you bought out Marston, did you buy any milling machine? A. We did; we bought milling machines to do the same work which cost Marston $275, and they cost us $3.16.

THE DEATH OF MR. NOYES.

MR. FIELD here arose and said that we had arrived at a stage in the day's proceedings when it was proper he should mention the death of Wm. Curtis Noyes. Only last Thursday, after trying a cause in the court above, he came in and listened to this trial. On Sunday morning, while dressing, he was struck with paralysis. He was only conscious for a few hours, just enough to ask the physician what was the matter with him, and expired. After a few further remarks, Mr. Field moved, in token of respect, that the court do now adjourn.

MR. EVARTS seconded the motion, and added a few remarks eulogistic of the deceased brother.

THE COURT most heartily responded to all that was said, respecting the merits of Mr. Noyes, and spoke of a remarkable argument that the counsel had made in the Court of Appeals in 1861, on the question of charitable uses, when he (Judge Mason) thought the subject had been entirely exhausted on a prior case. Mr. Noyes, said his Honor, became a great lawyer more by assiduous and indefatigable application, than by any unusual gifts of genius.

Adjourned till to-morrow at 10 o'clock.

ELEVENTH DAY.

WEDNESDAY, DECEMBER 28TH, 1864.

TESTIMONY OF GEORGE W. FARLEE CONTINUED.

GEORGE W. FARLEE.—*Direct examination resumed.*—Mr. Paret kept the cash book produced from 1st February; Mr. French from 1st December to the 1st of February;

while it was in the hands of Mr. French, to the best of my knowledge, it contained payments made by the concern, but did not show the debts we assumed of Mr. Marston's; it did not show the whole amount of money that went into the concern.

Q. At the time of the destruction of the gun factory, did you receive any, and, if so, what notice from Mr. Opdyke, respecting the continuance of his interest in it? A. I spoke to him about continuing the business, and he said he would have no more to do with manufacturing arms.

Cross-examined by defendant's counsel. I reside in New Jersey; have resided there about two years; am now a practising lawyer; have been admitted about eight years; was a lawyer in New Jersey before I came here as a lawyer; during that time my practice in the profession has been general; I became connected with Mr. Opdyke's family, by marriage, about six years ago; am Vice-President of Mariposa Mining Company; I put no capital into the concern for the manufacture of these guns, and drew nothing out; my compensation was sixty cents a gun, and at the time of the purchase of Mr. Marston, I suggested that as more of my time would be required, I wanted an additional interest, and Mr. Opdyke suggested that I should have, until a further arrangement, at the rate of $2,000 a year salary, besides sixty cents a gun; I wanted a fixed interest not contingent on the manufacture of guns; I received part of the compensation for the destruction of these guns—$500; the sixty cents a gun I was to have came one-half out of McNeil's profits and one-half out of Mr. Opdyke's; Mr. Loren Jones did not put any capital into the concern; he had no compensation directly out of the concern; I understood he had fifty cents a gun, coming out of McNeil's share; I generally made the purchases for the establishment; Mr. Jones would make some small purchases; we gave him ten dollars or so at a time, and he purchased; I purchased coal of Mr. Lowber; I purchased several milling machines—two of a party in Pine street at $350 a piece; I purchased gun stock of E. S. Wright; I purchased various other articles of other parties, whose names I cannot now recall.

Q. Did you go to Washington about this contract at any time? A. I went to Washington about another order, previous to this contract, to examine the title of the patent in reference to my interest in that contract, and Mr. Opdyke's interest.

Q. Was that a contract in reference to the manufacture of Gibbs' carbines? A. It was.

Q. Who did you go there with? (Objected to. Allowed.) A. Charles McNeil.

Q. How did you become acquainted with him? A. Through Mr. Opdyke's introduction; I do not think I went to Washington at Mr. Opdyke's suggestion; I went on account of my own interest in the matter.

Q. What was your interest in respect to that contract? (Objected to, unless it applied to the contract under consideration.)

WITNESS—It was not the same contract; my interest was sixty cents a gun in the manufacture of 20,000 carbines; Mr. Opdyke's interest was $1.70 per carbine; the contract was for 20,000 Gibbs's carbines; they did not get that contract; I did not make any application for that contract; Mr. Brooks told me he did not get it.

Q. When did your connection with this contract that was actually made for Gibbs's carbines commence? A. In New York, after our return from Washington; this contract was made in June, 1862; my visit to Washington was made in December, 1861.

Q. Between December and June what was going on in respect to contracts with the Government in which you and Mr. Opdyke were concerned? (Objected to as not relative to the contract in question. Excluded. Defendant excepts.)

(Check-book handed witness). When do these checks commence?

The first check of Mr. Opdyke's in this concern, is dated December 10, 1861, $25.50 to my order, to be paid to Brooks as the representative of the patentee, the next in January 14, 1862, $12.50.

For Mr. Marston to my order:

January 4, 1862	$1,500 00	May 13, 1862	10,000 00
December 2, 1861	2,806 06	May 19, 1862	1,500 00
March 20, 1862	1,000 00	May 21, 1862	175 00
April 5, 1862	2,000 00	May 26, 1862	2,000 00
April 11, 1862	1,500 00	June 3, 1862	1,500 00
April 19, 1862	1,000 00	June 9, 1862	390 00
April 26, 1862	1,000 00	June 11, 1862	1,600 00
May 3, 1862	1,500 00		

Q. You gave the checks, having connection with this business upon which the claim was made against the city? A. Yes, as representing the purchase money to Mr. Marston.

Q. I perceive they are all between December, the time when you first went to Washington, and June, 1862, when you say this contract was made? A. Yes, sir.

Q. What concern did they have with the business? A. I do not suppose they had any concern, except to get the value of the amount we paid Mr. Marston for the premises we purchased.

Q. What connection had you with Marston for the period between December and June? A. I had a contract with Marston.

Q. In which W. Opdyke was interested? A. Yes, sir; it was to make 10,000 carbines at $17.50.

Q. What contract with the Government was there? A. Brooks had a contract with the Government for the like number of arms.

Q. Then you and Opdyke were interested in the manufacture of Gibbs's carbines for the Government from December, 1861? A. Yes, sir; we were not manufacturing.

Q. And is not that 10,000 carbines the same 10,000 carbines in respect to which this claim against the city was used? A. The carbines actually manufactured were under a subsequent contract; the first order was annulled by the Government, as I understood.

Q. Were not 550 delivered under this first contract, and paid for at the rate of $28? A. No, sir; some were delivered and paid for; this was money for money loaned to Marston, which was secured on a chattel mortgage on his machinery.

Q. Was it not a continuous business, as far as your business with Marston was concerned, until the burning up, from December 13, 1861? A. No, sir.

Q. Why do these checks before June come into the account against the city? A. To indicate the amount of the purchase from Mr. Marston; for these checks Mr. Opdyke held Marston's notes, and the surrender of these formed our part of the consideration of the purchase.

Q. And what he paid Marston for the purchase enters into the claim against the city? A. In arriving at the value of what the things were worth.

Q. Take next check? A. June 16, 1862, for $12 50 to Marston; this and the checks following were on the same advances, same footing, and in the same stream of business, until we bought out Marston in December, 1862; there was a difference in the consideration of advances prior to June; Mr. Marston wanted further advances; all the advances were for the manufacture of these guns by Marston; the difference after June consisted in the reduced price at which Marston agreed to make the guns in consideration of the increased advance; Mr. Brooks had an order of Dec. 13, 1861; which was subsequently annulled; I don't know how long it lasted; in April, 1862, Mr. Brooks asked to have the time extended, which was denied, and then the contract of June was made; that took the place of the other, so far as our advances and Marston were concerned, and our interests.

Q. Was the contract of Dec. 13, 1861, the one in respect to which you went to Washington? A. No, I went to examine the title of the patent in respect to a contract for 20,000 guns in Dec., 1861; there was a contract by Brooks from Government to manufacture 10,000 Gibbs's carbines; subsequently Mr. Opdyke and I became interested in that contract; there was no difference between that contract and the one I went on in respect to, except the number of guns.

Q. Did any money pass between you or Opdyke and Marston, on the transactions of sale? A. Nothing but this representative of money.

Q. Nothing but the extinguishment of Marston's debts, either accruing to Opdyke or some one else? A. And a note of McNeil's of $2,000, and an additional surrender of Marston's note to McNeil for $2,500.

Q. Why did you buy Marston out? A. The fact that our capatalist, Mr. Opdyke, had advanced more money than he intended, and he refused to advance any more without being able to control it; the chattel mortgage was the only security he had for his advances; I understood Mr. Marston was worth $25,000.

Q. Was any proposition made by Mr. Opdyke to sell out to Mr. Marston? A. It was proposed; I heard he proposed to sell out, owing to the hazardous nature of the business, and his being entirely unacquainted with it, at a loss of $5,000 to $10,000; he did not offer to sell out to me at that loss; it was in speaking of the general condition of the business; he said this to me; the negotiation ended in his buying Marston out.

Q. What was the book subsequently discovered recovered from the fire, and which you say you have never seen? A. It was a book which is in the hands of the book-keeper, not discovered until after we made out the claim against the city; it was left at Mr. Opdyke's office; I do not know by whom; never heard the book described; a suit was brought against the city before the 90 days expired.

Q. You say that you made a statement to Mr. Blunt as to the principle on which

the claim was made up; charging the carbine price and deducting what it would cost to finish. Do you find anything of that in the printed testimony? A. I do not; there may be words connected with it; I have not examined closely; I think there is nothing; it was when I was examined as a witness I explained that to Mr. Blunt.

Q. Look at your first deposition: "The arms finished and in different stages of finish, are charged at the prices they cost the Company to make them in that condition, taking into consideration the fact that this was the first lot of arms made by me, counting the entire cost of manufacture." Did you say that to Mr. Blunt? A. I said that substantially; I don't recollect the language.

Q. In your second deposition you say: "The whole amount which I paid Mr. Marston for the articles claimed in the schedule, amounting to $67,693 31, was $76,437 36—which is $9,344 05 more than the amount I claim." Explain how you paid $9,000 more for those items? A. In the first place I must say that that is not a record of what I said, and so I can't explain it; it is not a fact that I paid $9,000 more than the amount stated in there.

Q. Did you pay any more for those articles? A. Yes, 25 carbines at $25—$625; that is within the $67,000; I don't see any other items on that account on which there is a reduction.

Q. Then that $67,000 represents in this claim the price you paid to Marston to a dollar and cent, excepting the 25 carbines put down at $625, for which you paid $2,500? A. Yes, sir.

Q. You say here that the difference was caused by some articles being charged in the inventory at a lower price, and you gave as an example the model gun which was charged at $500, although you paid $3,000 for it. Did you make such a statement to the committee? A. I think I did.

Q. Did you pay $3,000 for the model gun? A. No, sir, I did not.

Q. How came you to say so then? A. I had that in my mind as the amount that we had paid for the model gun; from the discussions which we had as to the appraisement as to the value of the model gun, I had the impression that it was set down in the inventory at $3,000; I had the inventory there, but did not refer to it, in regard to that item, because it appeared to be so familiar to my mind; the inventory shows it to be $500.

Q. In your short deposition you say, "There was a large engine turning lathe not charged in the schedule, as there was some dispute whether it was sold to Mr. Farlee or was still owned by Mr. Marston." By "schedule" there do you mean the schedule presented to the Board? A. Yes, sir; I did not say that; it is the item of $325 in the schedule, I think; during the progress of the trial Mr. Marston called my attention to that item and said it should not be in our claim; I went and told Mr. Blunt I wanted to be examined about that item, and I told him that in consideration of the question of title to that it should not have been put into the schedule.

Q. Was not this deposition read over to you before you signed it? A. Yes, sir; it reads, "There was a large engine turning lathe not charged in the schedule;" it should be as I told Mr. Blunt, that "it should not have charged in the schedule."

Q. Did you have it struck out of the schedule? A. No, I did not; Mr. Blunt was judge; I gave the testimony; I presume Mr. Blunt struck it out; he did not get the money for it.

The witness was cross-examined minutely as to entries on the cash-book, and stated that the cash-book showed everything in the inventory except two items—one of $500 to himself for salary, and $200 claimed by Parret; it was produced as an authentic book of the outlay in the concern, as far as it went; it shows from February 1.

Q. Was it produced as evidence that the manufacture of the guns had cost the amount claimed from the city by reason of showing the amount expended in the factory. A. As far as it would indicate.

Q. Was there any disbursement made by Opdyke or McNeil in this business that did not enter into the claim as it was presented to the city from the time the concern began until it was destroyed? A. All the outlays and liabilities entered into my consideration of the cost as presented in the claim.

Q. You said you considered that an honest mode of making the claim? A. Yes.

Q. Before this claim was presented, was any other method of making up the claim on the principle of actual value and enumeration of the things described, attempted? A. Yes, we tried; I don't know that it resulted in anything; we talked over the matter a great deal, and examined the books, and found difficulty in presenting it in that shape.

Q. Was there any principle of making up the claim against the city that should cover all the money Mr. Opdyke was out of pocket and nothing else? A. It was talked about; not exactly that; covering all his costs and liabilities on contracts; not what he was out of pocket, but what the concern was out of pocket; it was talked about between myself and Mr. Opdyke and Mr. Keene.

Q. Come to the claim for carbines, $110,000. You have stated the proper way of presenting the claim for carbines destroyed. Who first suggested that principle of charging Government price, and deducting what it would cost to furnish them? A. Mr. Loren Jones first suggested it.

Q. What was his reason for that way? A. I recollect no particular reason he gave, except that that was a proper and fair way; I told him I would consider it; I had a conversation with Mr. Opdyke in regard to it; I don't recollect what he said, more than his concurrence in the reasonableness and propriety of it; we both considered there ought to appear up to that time some profit on the guns; we had put on the Government price, which covered all the profit.

Q. Did that strike you as an honest mode of presenting the account? A. It did, in connection with the fact that the property was destroyed, and no further guns could be turned out of that establishment.

Q. Had you ever thought of it before Loren Jones suggested it? A. I do not think I had.

Q. Had Mr. Opdyke ever suggested it before you talked to him about it? A. I don't think he had.

Q. Did Opdyke tell you Loren Jones had talked with him about it? A. I can't recollect whether he did or not; he may; I told him Loren Jones had suggested it.

Q. You stated that "Mr. Opdyke said we should be exceedingly cautious to get it below, rather than above the actual cost." When was it he used that language to you? A. It was during the progress of making up the claim; he repeated it on two occasions, and used substantially the same language.

Q. When the claim was finished was it shown to Mr. Opdyke? A. I presume it was before it was sent in; I recollect his questioning Mr. Keene as to his carefulness in detail, and Mr. Parret as to his making accurate extracts from the cash book; Mr. Keene made up the carbine claim at his house; he got the computation of various parts at his home, and made it in pencil; I saw the process after Mr. Keene arrived at his conclusion.

Q. The carbine claim as you presented it to the city includes the full sum you would have received from the Government at the contract price, less the specific expense to complete the guns, as explained? A. Yes, sir.

Q. On that mode of payment, would not the entire royalty for the whole 7,000 guns have been received, if you had collected the claim as you had presented it? A. Yes, sir.

Q. At the price you claimed would you not have collected royalty on the whole, so that it was due and belonging to the patentee? A. Yes, sir.

Q. If you had collected all the royalty that belonged to him, why did you not pay it to him when he demanded it? A. We did not collect it; they cut down our claim, that is the only difference.

Q. And the cutting down of that claim, you put all of the royalty? A. Yes, sir.

Q. Why did you not give him all the royalty except the $7,000 that had been cut down? A. For the reason that we stated to him, as it appeared from our own payments and advances, that we would make nothing on the contract, and really any profit we would have made would have been on the balance of the $10,000, and I thought it was right and fair he should share the loss with us.

Q. The result was that he collected $5,000, when his claim was $15,000, if you

had collected the whole, and he lost $7,000 on the royalty by that docking? A. Yes, sir; I used as argument in adjusting the matter, that the city had cut our claim down, and I believed as the claim was presented, the Supervisors must have taken it off the guns, and furthermore it appeared by our accounts that we came out about even, and if any forfeit had been made, it would be on the guns subsequently to be delivered.

Q. Did you give him to understand that by paying him $5,000 that would make you come out about even. No, sir.

Q. You did pay McNeil an item of profit? A. Yes, sir; I think about 28th of November last; it was paid on the principle of Mr. Opdyke and myself conceding all the profits—upon the principle of giving him the profits of the whole concern.

Q. How much was allowed as profit of the concern? A. About $3,900; there was a re-examination of the matter by Mr. Opdyke that night, and he found a further profit of $1,500, by examining the check-book; there was a loan by Opdyke to Brooks construed as an advance on the contract, which Mr. Opdyke thought was a matter between him and Brooks, which should not be counted in the expenditure.

(Witness was cross-examined at length as to the items in the profit and loss accounts of Armory, which was published in report.)

WITNESS: That was made up by me; I believe it is correctly stated; a similar statement to show profit and loss was made up before the claim was presented to the city; I do not know where it is; it corresponded with it substantially.

Q. You have set down here "Due to patentee $15,000." Did that item appear in your computation, as made out before you made up your claim? A. It did not substantially.

Q. Your statement shows a profit of $2,400 on the face of the paper. If you collected from the city the whole claim as presented, what would then be the upshot of your claim? A. In addition to that statement, there would be the difference between $199,700 and $207,000.

Q. Assuming you got $207,000 instead of $199,700, then upon this statement of profit and loss, as it was finally closed, there would have been shown a real profit of about $10,000? A. That would appear as we settled.

(Counsel went into a comparison with the witness of the two accounts—the one in the claim presented to the city, and the one of yesterday.)

Q. Did not the schedule and this statement of outlay on your books include all the outlay that had been expended in making the guns delivered to the Government as well as those burned up? A. Including our liabilities; yes, sir.

Q. You have stated all the liabilities and outlays? A. Yes, sir.

Q. Did you not receive, upon the claim upon the city, if it had been paid in full, the outlay that had gone to make the guns for the Government, as well as those that were burned up? A. I always deducted the amount we received from the Government.

Q. Where? A. In making up my estimate, which was the estimate I had arrived, in stating to the Committee what was the cost of the concern; in the charge against the city there is no charge for guns delivered to the Government.

Q. Not in direct terms. But where, in your claim for machinery, tools, labor, and outlay, is there any omission of the entire outlay that the factory had been put to? A. We had been put to expense in making those guns which had been delivered, and for which we had received the money.

Q. Show me, upon your mode of making up the account, where any disbursements of Mr. Opdyke were omitted from the aggregate of your claim? A. There were two modes presented to Mr. Blunt.

Q. Have you not charged the expense of making those very guns delivered to the Government in your claim against the city? No, sir, I don't think we have.

Q. Present me a schedule of disbursements on outlay in the conduct of this business, from the time it commenced until the factory was burned up, that is not included in the claim, as you presented it to the city? A. I cannot give it.

Q. Can you give me a single item of disbursements for this factory, from the beginning to the end, that is not included in this claim against the city? A. Certainly; the item of so much for so many guns.

Q. It is stated that the cost of making these guns was presented to the Supervisors in this claim. Now can you point to any item, any subject, or any sum of disbursement for account of this factory, from the time it began to the time it was burned up, that is not included in that sum of $207,000? A. I can't point to those items, but I know there were costs which entered into the manufacture of those guns we delivered to the Government.

Q. Can you give me the items of expenditure for material, labor, or machinery, or tools, that are omitted in this claim against the city for carbines that were destroyed, and that go to the account of the carbines delivered to the Government? A. I cannot.

Q. How long would it have taken to finish the contract and deliver the 7,000, at the rate the factory was working? A. I think we delivered fifty a day.

Q. Do you know Mr. Weed, the defendant? A. I have known Mr. Weed by sight; I was not acquainted with him; I sent the letter, dated October 21, 1863, published in the Tribune of October 28, 1863, to that paper.

(Defendant's counsel offers the letter in evidence. Plaintiff's counsel objects. Offered to show the disposition of the witness. Ruled out. Exception.)

Q. Have you taken a particular interest in this matter of a gun claim, from the time it was presented until now? A. I have taken an interest in it; my name being connected with it.

Q. Are you in your feelings interested on the side of Mr. Opdyke, and hostile to Mr. Weed, in the case? A. I am not, except so far as justice will appear in the case.

Q. Have you written or published anything hostile to Mr. Weed? (Objected to. Excluded.)

Re-direct examination—Q. Did the claim presented to the city include anything but the property burned in the armory? A. No, sir.

Q. Was any expenditure or outlay included that did not enter into the property that was burned in the armory? A. No, sir.

Q. Was there a single cent mentioned to any human being as entering into this property, except what entered into the property burned? A. No, sir.

Q. As to the fact whether there was any charge whatever made to the city for guns delivered to the Governor, you are perfectly certain? A. I am perfectly certain there was not.

The Court adjourned at a little after 1 o'clock, to allow of counsel attending the funeral of Mr. Noyes.

TWELFTH DAY.

THURSDAY, DECEMBER 29TH, 1864.

At the resumption of this case yesterday morning, Mr. Hamilton Harris appeared (having come from Albany for the purpose), and stated that he never had heard of the letter from his brother, Hon. Ira Harris, to Opdyke, until he saw it in court; that it was on his representation to Mr. Blatchford that Mr. Pierrepont had made the statement he did in opening, and he wished to take the blame of that error upon himself.

EXAMINATION OF GEORGE W. FARLEE RESUMED.

GEORGE W. FARLEE.—*Re-direct examination resumed*—Q. How did you get at the cost of the guns burned in the armory? A. By subtracting the amount we received from Government from our whole outlay and liabilities.

Q. How was the profit obtained, as it finally appeared? A. Compromising claims which were against us.

Q. It appears by the account No. 2 that there is a loss of $1,500, and you paid Hendrickson $3,900 for profits. Explain that discrepancy? A. There was a check in October for about $1,700 that had not been entered into the account; it was on an advance to Marston, and was subsequently discovered by the book-keeper; in regard to the question put yesterday as to my bias against Mr. Weed, I would say,

I mean that my bias is not so great as to prevent my speaking the truth under oath; we allowed Hendrickson too much by a mistake; my interest was dependent on the profits; my mode of claiming for the carbines did not include any prospective profits; only the profits made to that time.

Re-cross-examination—Can you state any respect in which there would have been more profit on the 7,000 guns, if you had delivered them, than you received from your collection from the city? A. It would not have given us any more profit; the claim on the city included the profits that would have been derived on the arms unfinished.

Q. You say that your bias is not so great as to prevent your speaking the truth under oath; do you think that your bias just falls short of that? A. I think not; I have no particular hostility against Mr. Weed.

Q. Do you think you have a bias that just falls short of your speaking the truth under oath? A. No, sir.

Q. Do you think you are so free from bias as to stand as indifferent as a judge, only to have justice done? A. Well, a judge might try the case of a kinsman and be just; I feel a great interest in the success of Mr. Opdyke in the case.

Q. Is your bias different this morning from what it was yesterday? A. No, sir.

TESTIMONY OF JOHN PARET, JR.

JOHN PARET, Jr., called by plaintiff's counsel, was sworn, and examined by Mr. Field--I am engaged in the clothing business in the city; reside in New Jersey; from January to July, 1863, I was book-keeper at the Armory in Second avenue; I kept the cash-book produced here from February 1 to the destruction of the factory; it contains all the cash transactions correctly in that time; I was at the building on the day of its destruction; the first attack was in the morning; the police were in the main room; I was in the office alone; seeing the door would be broken by the mob, I called to the policemen; a shot was fired; the ringleader was killed; that deterred the mob for a while; they returned again, were again repulsed; when things looked most threatening the police were withdrawn, and Mr. Keene and I were left alone; we escaped through the rear of the building; on my return soon after, found the building on fire; I looked out of the office to see the mob; they were on Twenty-first or Twenty-second street and on Second avenue; it was not possible for me or Mr. Keene to hold that building, or with any force under our command, after the police withdrew; we had nothing to do with their being withdrawn; after the fire, I took means to save all I could from the ruins, and disposed of it at public sale; the proceeds were about $2,600—the net balance after expenses of $2,200; I had no knowledge of any of the books being saved at the time, except the cash-book; heard of another book yesterday. I made out the computations for the claim presented to the city; some portions were made by Mr. Keene, which I went over and saw they were correct; the price of the guns was got at by taking the contract price, and deducting the estimated cost for completing them; we took the price of machinery from the appraiser's inventory, on the purchase from Marston; it was correct; the cost of tools and fixtures was got at in the same way; they were correctly taken; the 25 carbines were $2,500 in Marston's inventory, and we reduced it to $625; the tools and machinery purchased—the prices were taken from the cash-book, including freight and necessary expenses; Mr. Keene and myself went over carefully from our memory the number of tool hands we had from 1st of February, and most of them we knew by name, and wrote the names down; I was satisfied that the average was rather below the actual number, and that the $17,000 was actually less than what was expended for tool hands; I am now satisfied that it was less; I was at the factory every day, with one or two exceptions; I did not suppose that Loren Jones had any connection with Opdyke and Farlee whatever; he made small purchased for the armory from day to day, upon specific orders, $50 at a time; after that was gone, he would present his vouchers and get $50 more; he received no salary and had nothing to do with the books; when I left I would lock the books up.

Q. Was there anything claimed for the guns delivered to the Government in the claim presented for the guns on the last page? A. No, sir.

Q. Were you examined before the Board of Supervisors; if so state the course

of examination? A. Mr. Blunt examined Farlee and Keene at considerable length —Keene more especially; I heard Keene explain to Mr. Blunt the way in which the claim was made up; he had his papers and memorandums with him, showing his calculations and the way in which he arrived at the results; he opened them, or offered to show them to Blunt, and explained to him that the guns were charged at the contract price, less the estimated cost of finishing; the two schedules now shown me are, according to my best recollection, the papers that Keene showed to Blunt.

Q. Have you been over the list of expenditures on account of outlay, and compared it with the cash-book from the time you went into the establishment; if so, is that account correct? A. I have, for the time that I was there, and the account is perfectly correct, I have checked the items (produces a copy in which the checks are marked).

Cross-examined—This list of checks embraces all that was received from Opdyke from the 3d of February, 1863, to the 14th of August, 1863, for the business of the armory; it was all the money that passed through my hands that I know of; it foots up in pencil, $82,123.17; my keeping of the cash-book commences Jan. 29; all after that is mine; the total footing from the 1st of December, 1862, is $114,350.55: the figures preceding, $71,117; I have no recollection of making, or for what purpose I made them: nor have I any recollection when the figures $185,467 and the $9,786, making a total of $195,253, were made, or for what purpose; I never made any footings, of my own knowledge, to represent the amount of the entire advances, but I made those additions for some purpose of my own, I presume, to satisfy my own mind; I have no recollection of the time or the object; I do not think I showed it to anybody; I had no recollection of its being on the book until it was shown to me here; it was made a long while ago, probably soon after the transaction.

Q. Was it not made when the claim was before the Board of Supervisors? A. That I do not recollect; this cash-book was before them; I do not know that they saw it at all; either Farlee or myself took the cash-book there; we went together; I was before the board only once besides the time I was examined; I was there an hour or thereabouts each time; Farlee and Keene were examined the same day I was; the cash-book was offered by me to substantiate the claim, and to give an opportunity to examine it thoroughly and see that all the items were taken from it; if I had then made this pencil footing I should certainly have recollected it; it was not made for the purpose of showing to the Supervisors; the cash-book does not show footings; to the best of my recollection there was nothing said by Blunt on the subject of what the total outlay was, nor did I state to him the total of these footings; Blunt took the cash-book and looked it over for a few moments, and compared the items with those on the schedule; I left Farlee and Keene there, and probably left the cash-book in Farlee's custody (witness shows two or three items in answer to a request of the counsel, corresponding in the cash-book of the schedule;) when Keene was testifying the clerk took notes, but as a general thing he would turn to Blunt, who told him what to write; I knew of items purchased of Marston not included in this claim; a great portion of the expenses on the cash-book are for material, stock, expenses, &c., which you can't find in this claim, except as estimated in the value of the guns; the schedule claims only for machinery, tools and fixtures; the materials of the guns are not specified, all the new supplies after December, 1862, are charged here; few tools were broken or we would have had many more tool men there; I am now in the clothing business, in company with Henry Paret; Wilson G. Hunt and George Opdyke are our special partners; it was established on the 28th of November, 1863; I was clerk for Opdyke before that for nearly two years, in his business as a merchant; I had been out of Opdyke's employ when I went into the gun factory; these papers presented by Keene in this trial are in my hand-writing; I know that after I went in there were 29 tool hands; before that I only know it from seeing the pay-roll; I paid the men myself and had daily intercourse with them; the ledger now shown I never saw till yesterday morning; I kept it commencing in January, 1863.

Re-direct—The claim for tools is included in the charge for tool hands; they were duplicating tools all the time.

TESTIMONY OF MILES FRENCH.

MILES FRENCH sworn. Examined by counsel for plaintiff—I was employed as book-keeper in this factory from December 1, 1862, to January 29, 1863; I made no entry in this cash-book of any payments by Farlee to the credit of Marston on account of debts he assumed by Marston; I kept that account on some book or paper, intending when they were all paid to make one general entry in the cash-book; that book or memorandum I left in the factory among the other papers; I know there were such payments made by Farlee.

Cross-examined—I saw the receipts; I did not see him pay any of the debts; I think I saw one of the checks; I cannot state the amount; it was my business to enter payments in the cash-book, if I thought proper; I was to do as I thought proper; I do not remember who was Superintendent when I went in; Knowlton came in soon after I did and stayed as long as I did.

TESTIMONY OF GENERAL CHARLES W. SANFORD.

GEN. CHARLES W. SANFORD sworn. Examined by counsel for plaintiff. On the morning of the 13th of July, 1863, on reaching my office about 10 o'clock from Westchester county, where I had been on Sunday, I found a note from Mayor Opdyke, requesting me to go immediately to his office; I went and found him and his private secretary there; he informed me that there was a very serious riot up town, which in his opinion required the intervention of the military; after hearing the information which he had, I concurred with him, but stated that the military force then at my control was very small; I however offered to do all I could; the Mayor then made a requisition for the military; I proceeded to collect as many men as I could, and ordered most of them to the Seventh avenue arsenal a few to the Elm street armory; about 12 o'clock I arrived at the Seventh avenue arsenal, and as soon as I could collect a sufficient force I moved down Broadway and dispersed all the rioters as we went; the men were kept busy all that day on the west side of the city till about one o'clock in the morning, when the riot subsided to a great degree; sometime during the morning of that day I received a requisition from the Police Commissioners to suppress the riot; everything was done that could be with my force; the regiments that were absent were telegraphed for, and did not arrive till Wednesday evening; after they got here the riot was immediately suppressed; if we had had three regiments at first the riot would never have extended beyond the first day; indeed, I had suppressed it on the west side of town, only I had not men enough on account of some of my troops having been withdrawn by General Brown, who interfered with General Wool's orders, the riot became more furious than before; I communicated with the Mayor by messages by Staff officers, but I only saw him after Monday but once at Governor Seymour's quarters at the St. Nicholas, and once prior at the office of the Police Commissioners a few minutes; I could not see what the Mayor could have done that he did not do; we had no efficient troops; the citizens were undisciplined and could do nothing against large masses.

TESTIMONY OF RUFUS F. ANDREWS.

RUFUS F. ANDREWS sworn. Examined by Mr. Emott, counsel for plaintiff. I am a member of the bar; I have known the plaintiff intimately since 1859, and had a speaking acquaintance with him some years before; in 1859 I endeavored to secure his indorsement by the branch of the American party with which I was connected; I continued with that party till 1860, when I supported Mr. Lincoln; I first became acquainted with Charles McNeil in 1859; he was a member of the American party in the convention which indorsed Opdyke; I was appointed Surveyor of the port of New York in 1861; I was a candidate for that position before I had any knowledge of the fact; during the last week in June I was informed that my name was suggested to settle a difficulty that existed between two branches of the party; there had been from the fourth of March, two candidates, Wakeman and Stanton; after Lincoln's inauguration I was a candidate for District Attorney for this district; I did not withdraw; at Mr. Evart's personal request another gentleman was appointed [laughter]; I went to Washington on the 29th of June and returned the same day.

Q. What did you learn at that time? (Objected to.)

Counsel for plaintiff offered to show that the witness was informed while at Washington, upon competent authority, that he was to receive this appointment of Surveyor. (Excluded—exception taken.)

Q. You went there because of the appointment? A. I went there because it had been suggested to me that it would do as well for me to show myself, and I returned on the suggestion that it was not best for me to remain, (laughter) that it would only excite the ire of the two belligerents who were fighting each other and they would turn and fight me. (Laughter).

Q. Had anything been said previously to you about your being a candidate? A. Mr. Barney had informed me that my name was mentioned in Washington; he was the first who spoke to me on the subject; I had spoken to nobody.

Q. Was there any announcement in the pu blic prints, and if so when, that you were to receive this appointment? (Objected to—excluded—exception taken).

Q. Did you have an interview with McNeil when this subject was mentioned; if so state it? A. The first time I ever had any conversation with McNeil was on the morning of July 5, when he called at my house, and I think some fifteen or twenty other gentlemen called before I got my breakfast, all wanting positions under the Surveyor of the port. (Laughter). I disposed of them all as fast as I could; McNeil remained; he said he saw by the papers that I was appointed, or was to be appointed, Surveyor; that he was very glad to see that such was the case; that he and I had belonged formerly to the American party and had acted together in the campaign of 1859, when we supported Opdyke for Mayor; he said that they had no politicians in the Custom-house; that Barney had no taste for politics, and Dennison had never had anything to do with any political organization, and he was very glad to see we were to have a politician in the office; he went on to say that he had an idea of running for Assembly on the Republican ticket, in the Eighteenth Ward; (he had since run in Queen's County) and that he should want some assistance probably to secure his nomination and carry his election; he said also that he felt a very great interest in having Opdyke nominated for Mayor at the coming Fall; my recollection is that I remarked to him at that time that it was very early in the season to talk about running a mayor, and he said he thought it was time to begin an organization, that the Democratic party was divided, and with sufficient patronage from the Custom-house and sufficient support in the way of the usual collections, we would be able to carry Opdyke in if we could get him nominated; I told him if I received the appointment of surveyor I would endeavor to do whatever I could for the interest of the party, and whatever was usual in the way of collections; he said he felt very much gratified to hear me speak in that way; that he did not know but I had some feeling toward Opdyke by reason of his having favored another man's appointment; I told him I had not the slightest—that Opdyke's relation to me had been most intimate; I had been in the habit of seeing him almost daily and conversing about matters going on in Washington, and that I had studiously kept from him any knowledge of the fact, till I found it was decided in Washington, that I was a candidate, because any influence on his side of the house, or on the side of Weed, would be fatal to my chances—which seemed to gratify him very much; then he said that Williamson felt a very great anxiety to bring about the nomination of Opdyke, and he wished me to meet Williamson, who was then his particular friend, at his place, as he called it, corner of Twenty-third street and Broadway, that evening; that he would see Williamson and have him there; I said to him that, after meeting some gentlemen at the Fifth Avenue Hotel that evening, I would call at his place; I called there about half-past eight or nine o'clock, and found McNeil sitting in the saloon; I was never there before; Williamson was not there; we waited half or three-quarters of an hour for him; McNeil then said something must have detained him, and wished me, as a personal favor, to call there the next evening; the next evening I went and found Williamson and McNeil together sitting in the main room; they asked me into a private room; it was about nine o'clock; Williamson congratulated me on the good news, as he called it, that I was to be surveyor, and commenced to speak about the circumstances under which I was appointed; one of them was certainly very liberal in trying to entertain me, for he had a table

spread with fine wines and plenty to eat; I judged from that that they wanted something of me, I did not know exactly what; I did not pay for the entertainment; Williamson said he understood that mine was an independent appointment for the American party, and that he nor his friends had had nothing to do with it; he then spoke of the coming campaign, and seemed to be very anxious that Opdyke should be nominated for Mayor, saying that he had always taken very great interest in his success—as I knew he had in 1859—and he wanted to see what could be done in the way of patronage to secure his nomination, and then what could be done in the way of raising money from the Custom-house to carry his election; I repeated to him what I had said to McNeil, that it was rather early to talk about that; I was not aware as yet that Opdyke would consent; that I had conversed with him in reference to whether he had intended to run, and he had assured me he had no such intention; Williamson said he thought him the strongest candidate, and that it was for the interest of the party and all of us that he should be nominated; he then spoke of Barney's not being a politician, having no taste for politics, and of Dennison, the naval officer, not being familiar with the party organizations of the city; he said he was very glad I was to have the office; that we had acted together in politics, and he thought we could do so again; he said it would be necessary to have some appointments made for each of the organizations of the several wards, in order to interest the different associations, and wanted me to use my influence to have that brought about; I told him my patronage was very light, but so far as I had any influence it should go for the benefit of the party; he then said it had been customary to raise large amounts from the Custom-house for election purposes, and he thought the heads of the department there would not take hold of the matter with rigor when the time came; all this was said by Williamson; McNeil occasionally put in a word; I told him I should do as the members of the Democratic party had done—raise all the money I could legitimately and reasonably, to carry any election we had; he said he was not exactly familiar with the percentage of tax they had usually put on, and stated what they had put on in the Tax Commissioner's office, which I thought rather steep, and told him that I had understood that two per cent. on the salaries was the usual assessment; he did not state the percentage in his office, but mentioned that one man, Wm. M. McIntyre, was assessed $250, whose salary was $1,000 or $1,500 (laughter); he was discharged because, as he swore before the legislative committee, he would not pay more (laughter); we figured up what the two per cent. would amount to, and made it from $10,000 to $15,000, dependent upon whether they all paid; he expressed himself gratified at the view I took of it, as a partisan, and spoke of his expecting to get all the publishing of the proceedings of the Common Council in *The Sunday Dispatch* if Opdyke was elected; something was said, also again, about McNeil's being a candidate for Assembly; subsequently he came and told me he had concluded not to run.

Q. Was there anything said about Opdyke's supporting you, or ceasing to support any other candidate for Surveyor? A. There was nothing of that kind said; Williamson said he had entertained the idea that, by reason of Opdyke's having supported Stanton up to the last, I might entertain some unpleasant feeling toward Opdyke, and he was very glad to see that that was not so; that was the whole conversation in which Opdyke's name was mentioned.

Q. Was there any agreement on your part to do, or cause anything to be done, if Opdyke should cease to support any one else and support you? A. No, sir; on the other hand, his influence would have destroyed my chance, and so would Wood's; both McNeil and Williamson accepted my appointment as a fixed fact; not a word was said by either of them expressing a desire that Opdyke should support me, or take any part in the matter; my relations with Opdyke were more intimate than those of either of those gentlemen, and I concealed from him all this time the fact of what was going on at Washington, until it was announced in the papers; I met Opdyke in front of St. Paul's Church, in company with General Ullmann and Merwin R. Brewer, just after my return from Washington, and I remarked to Opdyke that my appointment was decided upon; he said, "Well, I am not displeased or gratified—it was not in my power to do anything for you, being committed to another, but the relation between you and me is such that it is en-

tirely satisfactory;" that was before the interview between Williamson, McNeil, and myself; I suspected, at the time that McNeil called on me, that he had obtained the idea from Opdyke, and had come to seek patronage on that account.

Q. Did you ever meet McNeil or Williamson, and express your thanks and obligations to them? A. Never, they had nothing to do with it; the only subsequent interview I had with McNeil of any length was about a week after I came into office (which was the 1st of August; my appointment was made on the 13th of July and confirmed on the 16th); he asked me what I was going to do about appointments; he said he had concluded not to run for Assembly; I said, "I shall not want any of the appointments talked about, because I can get along without;" said he, "I understand you are going to make none until the 1st of September;" said I, No, I am going to wait and see who are the most efficient men, who can run the machine and whom I can spare;" said he, "look here, there is some money to be made out of this, and if you will let me know a week or two before who you are going to appoint, I will get $300 a-piece;" whereupon I denounced his proposition as infamous, and there was a considerable row, a number of clerks being present, and the gentleman walked out.

Q. Did you have an interview with him in Washington? A. I never did; I heard all his testimony; it is false from beginning to end; I never met McNeil with Opdyke in Washington; I have no recollection of ever seeing him there; since the interview just referred to at my office I have never spoken to McNeil at all; if he had shown himself in the office he would have been put out quick enough; I heard Williamson testify; my relations with him were friendly until with a month or two after I had been in office, when the collector sent down a note to me by Williamson's brother requesting me to examine him for inspector; I did so, and found him totally incompetent; I found his handwriting was such that he could not make out a return, (objected to), and I refused the certificate; Williamson came to see me within a day or two, and urged me to certify to his brother's competency; I told him in the discharge of my duty I could not do it; then he brought in two or three others to try to persuade me to give it, but I refused; then he left me in very great anger, and from that day to this he has not published one of his papers without some slimy article about me—even in the very midst of this trial.

Mr. Evarts here objected to the witness, who was a lawyer, persisting in going on giving incompetent testimony after he had been frequently rebuked.

Witness stated that he was not aware of having been rebuked.

Q. Did you ever pay, or cause to be paid, to Opdyke any money for anything whatever? A. I never paid one cent to Opdyke for anything, either in any business or political transaction, nor ever caused any to be paid, nor ever agreed to.

Q. Did you have control either of the appointments or of the appointees in the Custom-House? A. None except a few, some 28 all told; the number has since been increased.

Q. How many officers are there in all departments of the Custom-House? About twelve hundred; they vary from day to day; the number has been increased since the outbreak of the war.

Q. Did Opdyke do anything to procure your appointment? A. He did not.

Q. Or to withdraw his influence from anybody else? A. Nobody was withdrawn; the President appointed me independent of both factions, and he knows it as well as anybody.

Q. Were you pressed as a candidate of the American party? A. I can't say who pressed me; I can only say that the President informed me that he appointed me exclusively for the American party, on account of their support in 1860; it was his own appointment.

Q. Did you ever raise any money in the Surveyor's department? if so, how much? A. I did; some two per cent from some $400 or $500.

Q. What was done with it? A. It was paid over to the committees; it was the same assessment that Barney levied at the time he issued his circular.

Q. (By a juror.) I think that McNeil testified that he met Andrews, and they walked down together? A. I never walked down with him; all his statement about meeting me on the morning after my appointment at Opdyke's is untrue; nor did I ever thank him or Williamson for anything, for they had nothing to do with the matter.

Q. Was the contribution for the Custom House voluntary? A. Entirely so as I understood it; I read the circular; I saw gentlemen paying their assessments and heard no complaint.

Q. Did McNeil say in that interview that Williamson had come to hear your promises to raise money in case Opdyke would support you? A. Nothing of the kind.

Witness was further interrogated in regard to what McNiel testified to about the offer to raise $10,000 for Opdyke's election, and other things that were said at the interview at the oyster house, the counsel reading from the testimony of McNeil, and denied emphatically all the statements.

Cross-examined by Mr. Evarts—In the interviews with McNeil, the general object of supporting the Union and Republican party was spoken of; I stated that the sums to be raised in the Custom House would vary from $10,000 to $12,000 or $14,000, depending on those who had paid assessments; after I went into the office there was money raised for other political objects besides the election of Opdyke; I can't tell for what other purpose it was raised that fall; I paid assessment and knew others did for the fall election.

Q. Was there any requisition on the clerks of the Custom House that fall, except for Opdyke's election? A. Not in my department; I do not know how much was raised for Opdyke's election; I think $7,000; but have to depend on what I have heard; I can't say beyond reading Mr. Barney's testimony and what I heard; I had a conference with Mr. Barney before the money was raised; the party was urgent on us to raise money for the election; Mr. Barney did not like the idea; I told him I thought it was his duty to do as the Collectors had done; I understood the usual amount raised was two per cent.; I said I thought we ought to raise the usual amount in the Custom House; that year two per cent. was assessed; I don't know that that was the usual assessment; the Democratic party have assessed three per cent.; there was no emergency this fall, and there was an assessment of three per cent.

Q. Have you any knowledge of an assessment on the Custom-house previous to this, for a Mayoralty election? A. I have heard of it, but not being there would not know; I inquired, and was informed they were usual; when I was looking for the office I understood there were two candidates pressed by the two wings of the party; Mr. Wakeman was pressed by the Seward and Weed branch, Mr. Stanton, I understood, was pressed by the Chase or Radical branch of the party; I understood Mr. Opdyke to belong to the Radical branch; I was very intimate with Mr. Opdyke before this, and spent evenings at his house frequently; he urged my appointment for United States District Attorney; I was urged by the American party; I also had the support of Mr. Opdyke and Mr. Greeley; Mr. Opdyke told me Mr. Stanton was his candidate for the Surveyorship, and said he thought he would receive the appointment; that was before my name was suggested; Mr. Brewer and Gen. Ullmann were with me when I met Mr. Opdyke in the street; Mr. Brewer acted with the American party; Gen. Ullmann was considered a leading man in the American party.

Q. What words did you use to Mr. Opdyke when you met him in Broadway? A. The substance of what I said to him was, that I was to have this appointment of the Surveyorship of the Port; he seemed to be pleased about it, and said, "I am satisfied; it was not in my power to do anything for you, but I am satisfied with the results;" I understood Weed and Opdyke to be friendly at the time; at the interview with McNeil and Williamson, I did not hear it stated that Mr. Opdyke desired to be a candidate, but that they desired him to be a candidate; I knew, from having talked with Mr. Opdyke, that it was not his intention to be a candidate at all for the Mayoralty; after he was nominated, there was great difficulty to get him to accept.

Q. Did you convey the idea to Williamson that you would do what it was customary for the Custom-house to do toward Opdyke's election, in case you received the office? A. I gave these gentlemen to understand that I would give my support to whoever was nominated; I told them my relations with Mr. Opdyke were friendly; I stated that if I occupied the position in the Custom-house I should do as was usual to carry on the election; I understood the object of Williamson and

McNeil was to secure an inside track and control patronage; if their object was to make any agreement, or put me in the position of making any agreement for the support of Mr. Opdyke, they certainly did not declare it to me on that night; I see a moral wrong in the proposition as they have put it here, and I would not be guilty of it any more than I would cut off my right hand; no such thing ever occurred, and I would not be in such a transaction; Gen. Ullmann was interested in my appointment, just as Mr. Weed is interested in getting men appointed, as a recognition of the party to which he belonged, he was not interested pecuniarily in a cent.

Q. Did you go to Washington between the time you have stated you left here on 30th June, and time you went into the office? A. Yes, sir; I arrived at Washington on the 10th of July in company with Gen. Ullmann, Merwin W. Brewer, Dr. Price, then comptroller, and the gentlemen; it was intimated that the President would like to see some of the Americans in reference to my appointment.

Q. You went with a view to secure the appointment? A. I did not; I considered the appointment was made; it was merely to gratify the President to show it was satisfactory; it was suggested by Senator Harris; these gentlemen went on to show the President such a satisfaction would be entirely satisfactory; the President had not then sent in the name to the Senate.

Q. How did you first know Mr. Opdyke was to be a candidate for the Mayoralty that season? A. I did not know it until after the conventions met; the American party, with which I was, nominated De Peyster Ogden; I participated in that convention and nomination; he did not run; after Mr. Opdyke received the nomination of the Republican party, he hesitated about accepting it for some time; he said he would not accept it unless there was a union of all the elements opposed to the Democratic party; we went to work to do that; I had a hand in getting the American party to indorse Mr. Opdyke's nomination; I did not understand Mr. Opdyke to have any doubt of accepting the nomination after the union was made on his name.

Q. Did you understand a question which arose as to whether Mr. Opdyke and the other friends of Mr. Stanton would acquiesce in your appointment? A. I never heard anything of that kind; it was an independent appointment entirely, as the President knows.

Q. An independent appointment which grew out of the opposition between the two wings? A. Yes, sir; he thought if he appointed either, he would offend the other; so he would appoint a neutral man, and let them fight the battle out; that is the way I understood my appointment; I left the office on the 22d of September, 1864; Mr. Wakeman succeeded me—the same person who was a candidate of one of the wings of the party before.

Q. Have you any feeling of bias as between the parties of this suit? A. I have; my bias is in favor of Mr. Opdyke; I have had a very bitter feeling against Mr. Weed for some time; it dates from the time that he first attacked me in the newspapers, some months back.

Q. Have you a feeling against him in respect to losing your office? A. I have—not on account of the loss of the office, but on account of the course he took.

Q. You think he had something to do with your having that office? A. Yes, sir; I know he had; I would be an inhuman being if I did not have a feeling of hostility towards Mr. Weed; but I would not do him an injustice in my testimony.

TESTIMONY OF GEORGE LOCKWOOD.

George Lockwood, called by the plaintiff. I was a partner in the firm of George Opdyke & Co., while it was in existence; while Mr. Opdyke was Mayor I was acting as senior partner, in 1862--3; I do not know his exact interest, but it was between thirty and forty per cent.; I remember the garments made by Smith Bros. on the Spaulding cloth; the loss to our firm on the excess of 4,000 garments was $7,000; the garments returned were sold at private sale at $2.50, less five per cent.; there was a defect in the cloth; we never could get the dyers to make a perfect thing of it; they were sent to Scott, a dyer in Paterson; some portion sent

to Staten Island and returned; we wanted to have Mr. Spaulding take the cloth back; he refused.

Cross-examined—Q. What was the whole amount of Government contracts you were interested in, directly or otherwise, during 1862–3? A. Our contracts with the Government were not to a great extent.

Q. What interest had you in the contracts spoken of by Mr. Carhart of $4,700,000? A. Our firm had one-third interest, through Mr. Carhart; I suppose you meant contracts we had directly with the Government.

Q. What other contracts did you have an interest in? A. We had an interest in contracts with Smith Bros., to the amount of 16,000 infantry coats; Churchill made a sale of some goods we had for us; we had no interest with him in any contract; we had a small contract with Colonel Vinton, here, for blankets—none elsewhere; I had something to do with executing that.

Q. What was the interest of Opdyke & Co. in the Smith contract? A. One-half the amount of 16,000 coats.

Q. Who were partners in the firm of Opdyke & Co. at the time of those Government contracts? A. Mr. Lurher, Mr. Stroebell, Mr. Stryker, Mr. Gautrill, myself, and Mr. Opdyke; the firm existed until a year ago last June.

TESTIMONY OF SAMUEL B. STRYKER.

SAMUEL B. STRYKER, called for plaintiff, testified: He was a partner in the firm of Opdyke & Co. until June, 1862; is now in printing and dying business; remembers goods bought of Spaulding; about 40,000 yards were delivered; 5,000 yards were returned to Spaulding, after Scott had hired to dye them indigo blue; the Staten Island Company had about 28,000 yards to dye; they dyed them with a good indigo blue; I saw them before being dyed; they were spotted, and where the spots were they would not receive a good indigo blue; I think they could have been dyed black; they were bought of Spaulding as perfect goods; in cutting up they were obliged to cut round those spots; some of the goods returned by Scott were dyed over by the Staten Island Company; some of the spots still showed.

Cross-examined—The goods that were spotted did not go into the Government garments; I saw the spots cut out; all the goods received by the Government were a good indigo blue; the Government rejected about 4,000 coats, partly, I believe, on account of the spots; I do not know the exact reason; that happened after I left the concern.

TESTIMONY OF JAMES F. YOUNG.

JAMES F. YOUNG, called for plaintiff: I am Secretary of Staten Island Dyeing establishments, who dyed about 40,000 yards of the Spaulding cloth spoken of; they were dyed with a good indigo blue; did not receive the blue well; different portions of the piece were different shades when they came out of the dye.

TESTIMONY OF WILLIAM RICHARDSON.

WILLIAM RICHARDSON, called by plaintiff, sworn: In 1863 I was messenger in the Mayor's office; was there during the whole time of Mr. Opdyke's mayoralty; I know Charles McNeil; recollected his coming to the office after the claim against the city was presented for the armory.

Adjourned to 10 o'clock to-morrow.

THIRTEENTH DAY.

FRIDAY, DECEMBER 30TH, 1864.

WILLIAM RICHARDSON CALLED.

The plaintiff called WILLIAM RICHARDSON, a messenger in the Mayor's office during Mr. Opdyke's term of office, for the purpose of impeaching Charles McNeil, and to prove that McNeil declared to him, while the claim for the armory was pending,

that from his knowledge of Mr. Opdyke, he knew he would not put in a claim that was not perfectly just.

Counsel for defendant objected on the ground that it was collateral, and there was no foundation for the evidence. Excluded.

ALBERT ROBERTSON CALLED.

ALBERT ROBERTSON was also called to impeach McNeil, and prove that McNeil had borrowed a sum of money of the witness, and on that occasion told him that he had invested $20,000 in the gun factory.

Same objection and ruling.

EDMUND REQUA CALLED.

EDMUND REQUA was called on the same question, and excluded.

TESTIMONY OF JAMES T. BARRETT

JAMES T. BARRETT, being sworn, tes ified that he was employed as Superintendent of the Staten Island Dyeing Establishment ; that establishment dyed nearly 30,000 yards of the Spaulding cloth for Opdyke, with indigo blue ; piece goods are not susceptible of as good a dye as other goods.

TESTIMONY OF MERWIN R. BREWER.

MERWIN R. BREWER, called by plaintiff and sworn—I reside at No. 133 East Thirty-fourth street ; am a lawyer ; know Mr. Opdyke and Mr. Andrews ; on one occasion when walking with Mr. Andrews, I met Mr. Opdyke in Broadway ; it was on an occasion when the Surveyorship was mentioned ; on the 1st or 2d of July 1861 ; General Ullmann was with us ; there was some conversation.

Q. In that conversation was anything said about the office of Surveyor, and if so, what took place ? (Objected to ; admitted ; exception.) A. We were walking up Broadway, and met Mr. Opdyke coming down ; Mr. Andrews bowed, and they stopped ; Mr. Andrews said, " I am to be the next Surveyor of the port of New York ;" Mr. Opdyke said, " Well, I am satisfied," or words to that effect ; he then went on to say that he felt himself under obligations to Mr. Andrews ; that he was satisfied his man (Mr. Stanton) could not be appointed, and in that event he would rather see Mr. Andrews appointed than any one else ; there the interview ended ; on the 9th of July I went to Washington with other gentlemen.

Q. What occurred while there ?

(Objected to. Plaintiff offers to show that Mr. Andrews' appointment was procured without any intervention or agency of Mr. Opdyke, and to contradict McNeil on that subject. Admitted).

Q. Was Mr. Opdyke there ? A. No, sir ; I went on the 9th and left on the 15th ; it was a committee composed of Messrs. Ullmann, Bertholf, Price, Denison, Kirke, Cooper, and myself, which went on for the purpose of securing Mr. Andrews' appointment ; Mr. Opdyke was not with us ; the committee took no letter nor communication from him ; he had no intervention or agency in the matter of any description ; I never dreamt of Mr. Opdyke in the transaction at all ; never heard him mentioned ; I was present at the interview with the President.

Q. By what means, and in what manner, was that appointment of Mr. Andrews made ? (Objected to, on the ground that it would open up the whole subject of what influenced the appointment. Court admits evidence of what took place before the President.) A. On Tuesday or Wednesday, the 10th of July, 1861, the committee I have named was at the President's mansion at 12 o'clock ; he informed us that he was busy, and asked us to call at 8 o'clock in the evening ; we called, and had an interview of an hour and a half or two hours ; we had prepared a written argument or statement urging the appointment of Mr. Andrews, alleging the services he had rendered and the services his friends had rendered ; we stated to the President that we did not belong to the Republican party, and never had, but we had supported him ; that Mr. Andrews and Gen. Ullmann had rendered very essential service ; that we had no one in Washington to represent our interests, and therefore had come to him to look after the interests of the American party ; the President, after hearing everything that took place, and reading over the paper, stated,

Gentlemen, I appreciate the service you have rendered to me in the last canvass, but I am not prepared to decide this matter this evening; I have made an implied promise to the Secretary of State that, before I decided this matter, I would consult with him in reference to the premises, but by Thursday evening this matter shall be settled, and you shall not be disappointed; among other things, Mr. Ullmann stated that he and Mr. Andrews had called on him at Springfield, Ill., before the inauguration, and he had then agreed to take care of the American interest; that if he intended to carry out the promise there was now no other appointment of any note left in the city of New York, every other office being filled, except this; on Thursday we received a satisfactory message; we returned on the 15th; Mr. Andrews remained a few days; I have not stated all the conversation, but the substance of it.

Cross-examined by Mr. Evarts.—In summer of 1861 I was a lawyer.

Q. What was your connection with politics then? A. About the same as yours, sir; I held no office.

Mr. Evarts—I hope you will not refer to me, sir; it is a great piece of impertinence. You are a lawyer, and know better.

Mr. Brewer—I meant no disrespect; I shall not do so.

Q. What was your connection with the American party? A. I was a member of the party; I was not a member of any committee; these gentlemen I have named were friends of Mr. Andrews; I suppose a self-constituted committee; we had commuicated with Mr. Andrews on the subject of aiding him; in fine, Mr. Andrews stated to me that it had been intimated to him that he could get this appointment; Mr. Andrews went on and returned; Senator Harris, it was said, had stated that it would be a good thing for Mr. Andrews, if some members of the American party would go on and urge his claim to the President; I knew there were other candidates for the office; knew the parties pressing each, and that they were not friendly; I had very little to do with Mr. Opdyke at that time in politics; we were of different parties; I have no copy of the paper presented to the President; it was written by Dr. Price or General Ullmann; we all, including Mr. Andrews, made suggestions; it was stated to the President that Mr. Andrews had greatly impaired his health by his exertions in that campaign; also, that we had got up a meeting, immediately after his nomination, irrespective of party, supporting him; Mr. Ullmann also reminded the President that he and Mr. Andrews had called on him at Springfield, Ill., before the inauguration, and obtained his promise that he would take care of the interests of the American party; also, that he (Mr. Ullmann) now withdrew all claims for himself; the committee met frequently at my house, from the inauguration up to Mr. Andrews' appointment; I fix the time of our meeting Mr. Opdyke in the street about the 1st of July, from the fact of my going to Washington on the 9th, and also from the fact that General Ullmann was here at the time, and returned a day or two after the conversation; Gen. Ullmann is now at Port Hudson.

TESTIMONY OF GEORGE W. BLUNT.

George W. Blunt called by counsel for plaintiff. I am a chart and book publisher; I have resided in this city since 1810; I have been an ardent amateur in politics until within the last year; I was Chairman of the Finance Committee in 1859, when Mr. Opdyke first run for Mayor; we raised very little money then.

Q. Has it been customary to raise money for election purposes from employes in the public offices? (Objected to; excluded as having been already sufficiently proved; exception taken.)

Q. During the second Mayoralty canvass, when Mr. Opdyke ran, what was done in respect to raising money? (Same objection and ruling.)

By the Court—If you know anything about collections through the Custom-house from the Surveyor of the Port, you may state it. A. I know nothing about it.

Q. Had you anything to do with collections or committee-men, or otherwise, in 1861? A. No, sir; I was a subscriber to the fund to the committee of which Timothy G. Churchill was Chairman; the friends of Opdyke met at Mr. Churchill's house, some fifteen or twenty in number, when some money was subscribed, and a

committee was appointed to solicit further subscriptions for Opdyke's election; this was after the nomination, of course.

Cross-examined—It was, as usual, a few days, say ten or fifteen, preceding the election

TESTIMONY OF TIMOTHY G. CHURCHILL.

TIMOTHY G. CHURCHILL, called by counsel for plaintiff. I was Chairman and Treasurer of the Finance Committee when Mr. Opdyke was elected Mayor; a meeting was called at my house in November, with a view of raising funds to defray expenses; some twelve or fifteen or more were present, and subscriptions were taken up, amounting to $2,500 that evening; after the meeting took place, I went around, in company with Mr. Cowden, among some of Opdyke's friends; I think we two were the only persons engaged in collecting funds; we called on Mr. Barney to know what amount might be expected from the Custom-house, and he said that notes had already been sent to most of the employes; and many had sent in their contributions, and we might probably rely on from $10,000 to $12,000 from the Custom-house; I reported that to Opdyke.

Q. State what passed between you and Mr. Opdyke? (Objected to; excluded.)

Q. Did you afterwards receive any money from Mr. Barney? A. I received two checks—one for $5,000 and the other $1,482; I think they were payable to my order, and that I indorsed them both to Mr. Opdyke; he had previously advanced about $9,000, which passed through my hands; I think he expended altogether near $20,000 for his election; I can only state from what I have heard, whether other sums came through the custom-house.

Q. During all that time did you hear any intimation from any quarter that there had been any arrangement between Opdyke and Andrews or anybody else to get a certain sum of money from the Custom-house? (Objected to; excluded.)

Cross-examined—Q. What originated this meeting at your house? A. I had conversation with two or three gentlemen on the subject, and with Mr. Opdyke also; he, however, was not present at my house; we collected from the Custom-house about $6,482, and I collected myself from friends over $2,500, making over $9,000 in all; the idea of going to the Custom-house originated among some of the friends, possibly with Mr. Opdyke himself; I think Cowden and I went the day after the meeting to the Custom-house in a carriage; I did not get the money from the Custom-house for some time after I had paid out the money; I first called on Mr. Barney and he said that the notices had been sent out, and Mr. Palmer had charge of them; I went up into Palmer's office, and there I saw Andrews.

Q. Did not Mr. Barney suggest to you to see Andrews? A. I do not think he did; I have no recollection of it; I will state that I understood Mr. Barney to say it was customary to make assessments, and they were coming in pretty well; I think he did not approve of the plan himself, but the party seemed to require it, and he submitted; I think I inquired how soon the money could be received, and he said in a few days.

Q. Can you give the dates of those checks? A. I made an account at the time, and I see that the last check was received, I think, on the 7th of January, and the $5,000 check appears with no date opposite, but is under the date of December 2; the whole sum was received after the election (December 4); I found there was a balance due me of some $942, and I sent this account to Opdyke with the vouchers, and he sent me his check for the amount, which I had expended over what I had received; after that, on the 7th of January, Barney sent me the further check of $1,480, which I paid over to Opdyke.

Q. Did you see Barney and Opdyke together after the election when this matter was spoken of? A. I saw him after the election, but I think I never saw him in the presence of Opdyke in regard to this money.

Q. Did Opdyke ever tell you anything that passed between him and Barney on the subject of the short collection? A. I talked with Opdyke frequently about the amount to be received from Barney about the time of the election, and I think I talked with him before he went there; he had not told me anything about the amount to be received from the Custom-house, but spoke of collecting money from the employes; after my interview with Barney, I communicated the result of it to

Opdyke, and told him the amount to be expected; Opdyke said that would help him out very nicely.

Q. Subsequently, did you have any conversation with Opdyke in regard to the collection being less than he expected? A. I think I did after the settlement of this account; there was not much said, except that he paid the difference, whatever it was, in the amount expended; he expressed the same opinion that I did, that I did not get as much from Barney as he had promised; he thought the same thing, and expressed his disappointment at Barney's having promised $10,000 or $12,000, and his having received no more than he did; he did not state what he received; I got only the $6,000.

Q. How do you know that Opdyke spent $20,000? A. I so understood from him, during various conversations—$20,000, including what was collected from all sources; I saw him pay money out of his own pocket; I can't say how much he paid out of his own pocket, but I presume it was the difference between what I collected and what he expended.

Re-direct—The money I received was paid out to the various ward organizations, through vouchers; I know that Opdyke paid money to the same, for printing, posting, &c.

Re-cross—I saw the money paid by him in the Committee-room, to various persons representing the different wards, as they said.

The Court here adjourned till Tuesday, January 3, 1865, at 10 o'clock.

A Juror stated that he expected to have a blow-out, and would be unfit to be present on Tuesday; he wanted another day. [Laughter.]

The Court—You will have to postpone your blow-out till the following week. Adjourned to Tuesday, January 3.

FOURTEENTH DAY.

TUESDAY, JANUARY 3D, 1865.

The trial of this case was resumed.

TESTIMONY OF JOHN J. PHELPS.

The plaintiff called John J. Phelps, a retired merchant of New York, who was asked if he had at any time been applied to by Mr. Morris Ketchum and his associates to join in the purchase of the Mariposa Estate. The defendant's counsel objected as irrelevant. Plaintiff's counsel proposed to show that the witness declined, for the purpose of showing that it was an enterprise so undesirable that very few could be persuaded to join in it, as evidence of good faith in those who undertook it. Allowed.

Witness—Mr. Ketchum sent me a pamphlet explaining the advantages and capabilities of the Mariposa property; he then called at my house, and said the property was offered at a certain price; I cannot say what the price was; I think General Fremont was to give one-quarter of his interest to the parties who would come forward and pay the debts; I told him I would be one of the parties, provided the property could be got possession of; there was no difficulty; some of the parties demanded gold; I made it a condition that certain parties who demanded $300,000 or $400,000 should take pay in currency; negotiations by telegraph were entered into, and the party declined to take currency; I then said I would have nothing to do with it, owing to this, and the complications and trouble growing out of it; I considered it a very complicated affair.

By the Court—Was your refusal based upon the complication and trouble or want of pecuniary value in the property? A. Well, I thought it an exceedingly difficult thing to get hold of; I did not change my opinion as to its value, but I thought the complications reduced the value a good deal; that it could not be well got hold of.

Cross-examined—Q. Did you not understand the property to be ample security for the mortgage debt that would need to be raised upon it? A. I did not know of any

mortgage; I was to advance so much money—I think $200,000 or $300,000; there was no talk of a mortgage with me; I supposed we were to take the position of the creditors by an assignment; that we would have to come in with a certain sum of money, and take the place of the creditors; there was nothing of a stock company mentioned to me.

Q. Were you offered one-fifth of $2,500,000 of stock? A. No, sir.

Q. What was the advantage held out to you for your coming in? A. The mere value of the property, with the incumbrances removed; that it might be improved to advantage.

Q. What share were you to have of the one-fourth to be devoted to that purpose? A. An equal share with Mr. Ketchum and Mr. Opdyke and Hoey—one-fourth of the one-quarter; I think these proposals were made to me some time last winter.

Q. You are pretty actively employed with your capital and means in operations that seem satisfactory to you? A. No; I cannot say I am; I keep it invested—not in speculations.

Q. Did you regard this as a speculation if you had gone into it? A. I do not know what I should call it; I probably should have considered it as a good investment if the debts were paid.

Q. You did not consider there was much risk of the money you should put in? A. I thought there was a good deal of risk; there was a great deal of difficulty in getting possession; the property was to be sold within a week, and immediate steps had to be taken; it was a great way off, and there was difficulty to get attendance; the price was the payment of the lien upon it; my impression is that $1,200,000 was to be paid in money without much delay; I suppose we were to take the place of creditors, and to receive the contingent advantage of the ¼ of General Fremont's ⅝th.

Re-direct—Were you not mistaken in saying ¼ of ⅝? Was it not ¼ of the whole estate to come out of General Fremont's 6-8? A. That may be.

Q. Did you not understand you were to have ¼ of a bonus for going into this operation? A. Yes; I understood it was to be ¼ over and above the debts, and I was to have one-fourth of that.

GEORGE RUSHER CALLED.

George Rusher, of Brooklyn, doing business at No. 16 Beekman street, was called to prove that he knew the general reputation of Henry D. Stover; that his reputation for truth was very bad, and he did not think he would believe him under oath.

TESTIMONY OF J. B. WARING.

J. B. Waring, of No. 312 West Twenty-fourth street, a machinist, was sworn. He testified that he was acquainted with gun machinery; that from December, 1862, to July, 1863, there was an advance in the price of machinery of from 25 to 50 per cent.; he had occasion to inquire during that period, and was deterred from purchasing for other parties by the increase in price; iron had increased from 30 to 50 per cent., and labor 20 per cent.

Q. Is machinery rendered more or less valuable by being used two or there months? A. To the owners or those using it, machinery is increased in value by a few months use; it runs more easily; in making tools there is considerable breakage, and in using tools there is very considerable loss from breakage and wear, and in gun machinery the tools mostly used are milling tools, and they require to be accurately made and kept in proper shape.

Cross-examined—I am thirty years old; I have worked on silk and gun machinery, making gun-sights; was brought up to the business of machinist; I attempted to buy milling machines in December, 1863, and then ascertained the price, which was from $200 to $500; I also tried to buy in June, 1863, but prices had gone up and I did not buy; I went to Worcester and Hartford for that purpose.

TESTIMONY OF JOHN A. SCHENCK.

John A. Schenck called by plaintiff—I have been a machinist 30 years; I have

made a few gun machines; machinery, iron and labor advanced in price from December, 1862, to July, 1863, from 20 to 50 per cent.

Cross-examined—Material has been advancing in price since July, 1863; I now pay 10 and 12 cents a pound for the same things that I bought for 4½ in 1863; I should not think that the wear of tools in a gun factory would be more than 10 per cent. without regard to replenishing.

TESTIMONY OF WILLIAM H. ARMSTRONG.

WILLIAM H. ARMSTRONG called by plaintiff—I am a lawyer; in 1863 I was private secretary to the Mayor; I assisted in the correspondence in the office; a record was kept of official letters, and some important proclamations; (book produced;) on the 13th of July, 1863, a communication was addressed to Thomas C. Acton, President of the Board of Police Commissioners; I have no doubt it was sent; (communication offered in evidence; objected to as too remote from any issue.)

MR. FIELD said that the counsel in his opening charged that Mr. Opdyke connived at the destruction of the armory.

Counsel for the defendant denied that such charge was made.

MR. FIELD said that questions were put to the witnesses with the view of showing that fact.

THE COURT allowed the record to be read.

Witness then read communication to Mr. Acton, also one to Gov. Seymour, one to Gen. Wool. one to Gen. Sanford, and one to Admiral Paulding, on the day of the riot; also telegrams to Gov. Seymour and Secretary Stanton.

TESTIMONY OF HERVEY K. SHELDON.

HERVEY K. SHELDON, being called by plaintiff to testify to the character of Mr. Stover, said that his general character was pretty bad; he had but slight acquaintance with him and could not say as to his character for truth and veracity; from his general character I would not believe him under oath.

TESTIMONY OF CHARLES E. JENKINS.

CHARLES E. JENKINS called by plaintiff—I am of the law firm of Jenkins, Opdyke & Ackerman; I sent out the commission to examine the Secretary of the Navy; I have received several letters from Mr. Brown, the commissioner at Washington, informing me that the Secretary had referred the question to the President, and the President to the Attorney-General; I received a telegram yesterday saying that he hoped to have a favorable answer this morning; I have telegraphed back to execute the commission if possible. (The object of the commission is to get the record of an alleged conviction of Mr. Stover of some criminal offense.)

TESTIMONY OF GEORGE OPDYKE.

GEORGE OPDYKE, SWORN examined by Mr. Field: Q. When and how did you become connected with the armory in question? A. My first connection with it was under a contract made in the name of Farlee on one side and the patentees on the other, dated December 18, 1861, Mr. Farlee combining the interest of McNeil and myself; there had been a previous contract between the patentees and McNeil in the name of Hendrickson, dated December 13, 1861; the contract with Farlee was five days later; it was to manufacture 10,000 Gibbs's breach-loading carbines for the Government; after McNeil had obtained the contract in the name of his friend Hendrickson, he, Farlee and myself had conferences with regard to taking that contract, and to making a coincident contract with Marston, the gun manufacturer, to produce the arms for us.

Q. What was the arrangement between you, Farlee and McNeil? A. The distinct understanding between us was that after we had agreed upon the terms first with the patentees and secondly with the manufacturer, Marston, with the former at $21.50 and the latter at $17.50, leaving a profit on the two contracts of $4 per gun, McNeil should have $1.70, Farlee 60 cents, and myself $1.70.

Q. What was said and done between you? A. McNeil informed us that in the obtainment of this contract he had made an advance of $7,500, which was to be repaid out of the first guns delivered, and he asked that I advance one-half or re-

imburse him one-half; he had given $5,000 in money and a draft on Hendrickson for $2,500, and he asked me to pay on the acceptance, when due, $1,250, and make up the one-half, which would be $3,750; then in making the terms with Marston, he required an advance of $5,000; so it was agreed that McNeil should advance one-half and I the other; that Farlee should attend to making up all the papers, bring a lawyer, and they should be in his name; that he should take all the trouble of the contracts off our hands, to be made in his name.

Q. Was there any other advances between you and McNeil at that time agreed upon or contemplated? A. That was the only advance contemplated; Marston said it was all he should require; it has appeared from the testimony of Mr. Jones that McNeil asked that Jones be a party; I peremptorily refused, and said, we have nothing whatever to do with it; and about the time the thing was consummated, McNeil informed me, for the first time, having previously stated that he had money enough to advance half that amount, but not the whole; that this money was his wife's, and he desired that the interest should be considered in her name; I don't think I asked him if he had judgments over him, but I inferred so from this information; had I known that at the time the negotiation began, I should never have gone into a joint interest with him. (Objected to, and excluded.)

Q. After the first arrangement with Marston, were any, and if so, what advances made by you to him? A. Large advances were subsequently made to Marston; he had previously made guns mainly, if not exclusively, by hand, and was very much mistaken in the amount of capital required for making them by machinery; he called very rapidly for further advances until the amount had perhaps doubled; I refused to go further on what I deemed insufficient security in a business with which I was not familiar, and known to be hazardous, unless the contract was changed; he very cheerfully assented, and we made a new one, reducing the price of the gun to $17, on condition of my advancing $15,000; I went on and advanced perhaps double that amount; I then again refused to go on, fearing that under his management the time of the contract might expire, and we would have the guns on our hands; I questioned him very closely about the time required, and he gave me assurance that with more money he would be able to get them out; I then agreed to advance $40,000 or $45,000 on condition that he would annul the contract and make the guns for $16.50. McNeil also agreed to abate 25 cents from his interest. I went on until my advances reached nearly $70,000; the guns were not completed, and we became fearful that Marston would not be able to execute the contract in time; we therefore deemed it important that some change should be made. I asked Marston to find some other capitalist to take my place; he did not —perhaps could not find one; then I asked him, as an alternative, to sell the property to us: that if I should foreclose my chattel mortgage, the property should be sold to parties not engaged in manufacturing that gun; the machinery might bring very near its value, but the tools would bring very much less, and it might be ruinous and I might fail to get back my money; Mr. Farlee had gone around and consulted different experts in the business, and we were satisfied that with proper management the guns could be made at a profit; so rather than injure Mr. Marston and sacrifice any money ourselves, we agreed to purchase him out at a fair valuation of the property; thereupon appraisers were chosen, their decision not to be final, but if both were satisfied with it the sale was to be consummated.

Q. What was the state of the contract at that time? A. The profit was $5 per gun, of which Farlee was to get 60 cents, McNeil $1.45, and the balance was to come to me. The appraisement was made and McNeil, Farlee and myself examined it carefully; some of the items struck us as being too high, but Colby and Knowlton the appraisers, assured us that it was right, and we finally agreed to accept the valuation and make the purchase; the payments were made by canceling the notes given by Marston to McNeil, $2,500, and to me amounting to nearly $70,000, and to pay a list of indebtedness representing property on the premises not otherwise inventoried, amounting to $16,000; McNeil being apparently more anxious than others to consummate the purchase, agreed without my knowledge to pay $2,000 in addition; Farlee and I claimed certain deductions for rent, coal, &c., and it was finally compromised by this agreement of McNeil; Marston afterwards told me what he had done, and it was accompanied with a condition that I should dis-

count the note at 4 or 6 months, which I agreed to do, and the sale was consummated.

Q. By whom was the purchase made? A. It was made in the na me of Farlee in the joint interest of himself, McNeil and myself.

Q. After that purchase who carried on the business? A. Mr. Farlee was put in charge, and we employed as foreman Mr. Knowlton, who assured us that he would be able to finish up the equipment and tools, and turn out finished guns in time to execute the contract; he seemed to be an energetic man and that was one of the reasons we were led to make the purchase; Knowlton remained until about the 1st of February, 1863; he failed to get on as rapidly as he promised and we had some intimations that he was in collusion with some of the sub-contractors, making a commission on their contracts; I never knew whether it was true; McNeil said it was certainly so; at all events it was sufficient to shake our confidence in him together with his want of success; so we got another man, Mr. Keene, who proved to be a capital workman, very energetic and very faithful; he went on and early in May began to turn out guns, two or three a day, and increasing the number from day to day till it reached at the time of the fire 50 per day.

Q. How much were you at the armory? A. I usually looked in about twice a week on my way down to the Mayor's office; I would question Keene very closely about the progress and make such observations as would occur to a mere layman not acquainted with machinery or tools; I saw the changes and was satisfied with the progress.

Q. On the 13th of July, 1863, what was the condition of the armory as regards prosperity or otherwise? A. At that time we were very well satisfied with its condition; the works were finished and the product quite as large as we had expected. Mr. Keene said that some few machines and tools were required to bring it to its ultimate capacity, and he believed from that time forward he could produce 50 guns a day at a very fair profit; we were very much encouraged, so much so that some weeks previous to the destruction I suggested to my son-in-law and one of my sons, who had mechanical taste, that if they would take up the business I would become a special partner.

Q. Did you make any estimate of the profit you expected to make out of it? A. Having nearly $200,000 invested in it, according to my habit as a business man, I looked after my interest, and obtained all the information I could from the most trustworthy sources, from the superintendent and employes, and arrived at the conclusion (objected to) that from that time we could make from $4 to $5 a gun clear of the royalty; I took a good deal of pains to ascertain the facts, and found as I believed, that the gun was one that would be very desirable, not only for the war, but for general sale at the West for men on horseback.

Q. Look at that statement (printed) of the account of the profit and loss on the armory, as it appeared when the claim was presented to the Board of Supervisors, and also as the matter was finally closed, and say if it is correct. A. Those two accounts are correct; the first was not made up in this precise form prior to the presentation of the claim; this is more accurate, being revised; the result of the last one is a balance against the concern of $1,555 34; the proceeds of the auction sale of debris do not appear here, they having been applied to the payment of debts which do not appear here; I have only Farlee's statement for that.

Q. Tell the jury whether in the course of the riots there was any design on your part to have your armory destroyed? A. Not the slightest.

Q. You omitted nothing and did nothing with that view? A. Nothing whatever.

Q. What did you do to suppress the riot and protect the property of citizens? A. I arrived at the Mayor's office on the morning of the 13th, about 10½ o'clock; I had been there not more than fifteen minutes before a messenger arrived stating that there was a serious riot in the upper part of the city; in about five minutes more another messenger came, and said that they were demolishing the Provost-Marshal's office in the upper part of the town; that the police had been driven back, and Superintendent Kennedy was very seriously injured, and that they had set fire to the premises; thereupon I at once addressed a note to the President of the Police Commissioners, also to General Sandford, and another, soon after, to Gen-

eral Wool; General Sandford came over, and after some conversation on the defenseless condition of the city, in consequence of the regiments having been sent to Pennsylvania to repel the invasion, said he would do the best he could; we mutually agreed that it was best it should be done immediately, that the only way to put down the riot was to meet it in its inception with rigor, and to use no blank cartridges; he at once went about the business; very soon Major-General Wool came in, and he at once coincided with me, ordered out what troops he had in the vicinity, and joined me in efforts to collect them from the adjoining country; we sent telegrams besides those read here this morning; we sent a messenger to the Governor of New Jersey, understanding that there were regiments at Newark; we sent to West Point, to Utica, to Rochester, and to the eastward for a regiment that had just passed through this city; meanwhile Commissioner Acton came into my office some twenty minutes after General Wool had left; I asked him to join in the requisition that I had made for the militia, telling him that it was desirable to have all possible unity of action; he declined, thinking, I presume, that the proper time had not arrived; I learned afterwards, that in the afternoon he did join in the requisition; about the time General Sandford was leaving my office Farlee came in and said that he had come down from the armory in the morning, and while down town had heard of the riot, and he thought the armory would be very likely to be attacked for the purpose of getting guns, in all of which we coincided; he then asked me if I would give him official authority to arm the workmen; I told him I had no doubt at all of the propricty, but as General Wool was there I would consult him, which I did, and he coincided; so I gave him orders to arm his men, and told him to shoot down any one who attempted to break in, and to defend it to the last; some time in the afternoon, Farlee returned and stated that he had found the building in the possession of 25 or 30 policemen, that he had put arms and cartridges in their hands, and they felt entire confidence that they could protect the premises; I felt very much relieved, supposing that with the workmen and the police the premises were secure, the first attack having been repulsed; about four o'clock, having nothing more to detain me at the office, General Wool having his headquarters at the St. Nicholas, General Sandford having gone to defend the arsenal on the west side of town, and the Police Commissioners' office being near the St. Nicholas, at the suggestion of the Sheriff, made a third time, I went to the St. Nicholas, arriving there a little after four.

Q. Was Gov. Seymour there? A. Gov. Seymour was not in the city till the next day at 11 or 12 o'clock; all this time the alarm was very general; hundreds came to me saying that their premises were threatened; having no force to protect them, I stated to them very frankly that we had not police and military to meet the rioters actually at work, and it was therefore impossible to defend premises only threatened; about this time notices began to come in demanding protection of property threatened, with a view to secure legal rights in case of destruction; these notices I sent to the Police Commissioners, who had joint control of the police and military forces; Gen. Wool was going to place Col. Nugent in command under him; I recommended Gen. Brown as an officer of more experience and capacity, and at the request of the Police Commissioners he was stationed at their headquarters to co-operate with them, being under the direction of Gen. Wool, who put himself under my direction; at the same time I went and asked the Police Commissioners to arm the Police; up to 8 or 10 o'clock that evening we had failed to get the State militia under arms to the extent of more than 700 or 800 men, and there was some uncertainty whether they would be trustworthy; the thing threatening to assume a party aspect, the Commissioners felt unwilling to arm the police without the sanction of the Governor; I told them if they were unwilling to take the responsibility I would make the requisition and provide them with arms; they were armed sufficiently at the arsenal; they declined, however, to do it during the afternoon; Mr. Jones has testified that he came to me and notified me that the Police had been withdrawn; I assume that he is right, though I have no recollection of it; but I do know that some time in the afternoon Mr. Brooks, who felt a great personal interest in the matter in view of his royalty, told me that the Police had been withdrawn, and I learned from other sources that they had concentrated at headquarters ready to be sent out; I con-

sulted with General Wool whether it was possible to detail any force to defend the armory; he had none, and Gen. Brown was co-operating with the Police Commissioners; Brooks said there was artillery on Governor's Island, and if he could get it he would guarantee to defend the armory; Gen. Wool gave the requisition, and Brooks went and got it; I learned that he arrived at the armory with his artillery after it had been fired; every possible effort was made by me to protect the property of every citizen; of course I make no distinction between my own and the property of others; meanwhile, during the afternoon my own dwelling was attacked and there was no police force to protect it, but the eloquence of some of our leaing citizens dissuaded the mob and they went away; next morning it was again attacked; no police were there to defend it; I mention this because it has been stated that a force was sent there; my wife and youngest son were driven out, and made their escape through the back door into the basement of a neighbor's house; they got into a carriage, were chased by the mob, who shouted murder after them, and came down to where I was.

Q. What did you have to do with the claim for damages, upon what principle was it made. and what did you think of it? A There was some debris left, and my first care was in regard to that; my book-keeper, Paret, said the remains would probably bring something, and it was important to gather them, or the boys would carry them away; so I went to the Comptroller and got his consent, and then authorized Paret to dispose of the debris; all the books being destroyed except the cash-book, in conferring with Mr. Farlee, and. I think, Mr. Keene, as to how it would be possible to get a correct inventory of such a multiplicity of articles and materials; we both agreed that it would be impossible to even approximate accurately; the suggestion occurred to me whether it would be proper to present the aggregate of the investment and liabilities, and deduct therefrom the receipts, waiving any claim for profit; but it at once occurred to me that that would not be a legal form, as the city authorities might assume that we had been doing a losing business, and would not know what property we had actually lost; casting about as to the best method, I having a large interest, being Mayor of the city, and my situation being a delicate and embarrassing one, I was anxious to make the claim as accurate as possible; Mr. Jones came into the office and suggested that the most feasible and practicable method would be to charge for the machinery and tools as they existed, and for the guns at the contract price less the cost to finish them; he gave me no figuring; he had a blank form in his hand—so many guns at such a price, less so much for finishing—or something in that way; the interview was very short, and the conversation very brief.

Q. Did he make a statement of the expenditures and receipts, and the claims of Farlee and McNeil and others? A. Nothing of that sort, no remarks whatever with regard to the rights of outsiders, merely as being a proper method of making out the account, I told him I would consider the matter and he might make the suggestion to Farlee and we would consider it; I afterwards saw Farlee and we carefully considered the question, and we decided that that was a proper, legal and correct method of presenting the claim; that if any profits had been made we were entitled to it; we hoped there had been some; we could not tell; I asked Farlee to confer with Keene to know whether we could get an accurate account made in that form; he did so with Keene and the book-keeper, and they thought they had sufficient data to get it up accurately in that way; I told Farlee that if they felt confident of it, to authorize them to go on, and I enjoined the strictest accuracy, and that whenever a doubt existed to give the city the benefit of it; not to charge a single item but what they were confident was there; they were some weeks, I think, completing it, certainly ten days to two weeks.

Q. Did you believe that to be a fair, honest, and true mode of making out the claim? (Objected to—allowed—exception) A. I believed it to be a fair, just, and honest mode, and a just, fair and honest claim, made out less than the actual value of the property lost.

Q. Have you any doubt about it? A. Not the slightest—never had.

Q. Was there any concealment? A. No. sir. (Objected to.)

Q. When this claim was being made up, was anything said at any time about the increased price of machinery, or its subsequent appreciation in value? A. Yes.

It was represented to me by Mr. Farlee and Mr. Keene that material had advanced in price since the time this purchase was made, they felt that we were entitled to replace the same machinery and tools there, and they urged that it be charged at its then market value—what it would cost to replace it. I acquiesced in the justice of that form; but I felt it was a claim in which I had a large interest, and as I was one of the city officials, I would prefer to waive that portion of my right, and put it in at cost so as to prevent any future criticism. This claim was presented to the Comptroller, then to the Supervisors.

Q. Had you any conference with any of the Supervisors, in relation to this claim? A. The only one I recollect speaking to prior to the final consideration was with Mr. Purdy, once, possibly twice in my office; it was after the claim was examined by Mr. Blunt and before it was acted upon; I said to Mr. Purdy that the claim which had been presented in Mr. Farlee's name, and in which I was interested, was a large amount of money to lay out of, and if he could do anything in having it acted upon, I should be obliged, without doing injustice to the claims of others; that I wished no priority in its consideration, but if anything could be done to examine it I would be gratified; I never had any conversation with any supervisor in relation to it except him, and with him only, as to the time.

Q. When the matter came up before the committee, finally, state whether you were sent for. A. I had been frequently sent for by the committee to come up and be present at the examination of various claims; I was sent for on this occasion more than once; when I reached the room some small claim was under consideration; then the claim of Mr. Wakeman was taken up; that was gone through with after various propositions in regard to reduction, and a liberal abatement made; then Mr. Farlee's was taken up, and very soon after that was taken in hands, I said to the Supervisor: "Here is a claim in which I have an interest, and I feel it is indelicate for me to be present; but before leaving I will say this: I enjoined Mr. Farlee and the others who were making up the claim to be as accurate as possible, and to make the claims just; it is for you to judge whether they have done so or not; I have no knowledge of its details, but I notice by your proceedings that your rule is to treat these claims with a great deal of freedom, and I desire you to treat this with the same freedom; I desire no forbearance because I am interested: I wish you to treat it with the same rigor and freedom as the rest;" I was not there on the action of the committee; I was not at the meeting of the Supervisors.

Q. Afterward the resolution came to you with 49 other claims for your approval? A. Yes, sir; may I state my reason for approving? It came, I believe, in connection with some 40 odd others, all in one resolution; I feared it might possibly misrepresent me to approve a claim in which I had an interest myself; I felt, on the other hand, a very clear conviction that the claim, instead of being too large, was too small; there were no good grounds for cutting it down; being convinced it was right, and being unwilling to delay other claims for ten days in getting their funds, I felt it was my duty to sign it together with the others.

By the Court—Did you suppose that you could not refuse your assent to this claim and allow the others? A. That I believe was the case.

After the claim was paid I had a settlement with Brooks, the agent of the patentee; Mr. Farlee informed me that Mr. Brooks claimed the whole of the royalty on the 6,000 unfinished guns, and threatened to prosecute his claim unless it was paid; I had a conference with Mr. Brooks at my house; I insisted that equity demanded a reduction; he offered to settle with the payment of an additional $10,000, having already received about $11,000, the claim being about $26,000; being an abatement of $10,000; I offered to settle with him by giving him $5,000 more, which would make an abatement on the whole of $10,000; this he refused, and left with the declaration that he would prosecute unless we paid him $5,000 more; subsequently $5,000 was paid him; the settlement with Remington was as it appears on the account.

Q. State whether you made any offer to McNeil, and what it was. A. After the City had settled the claim, and we had settled with the patentees, McNeil came to the Mayor's office and demanded a settlement with me; I told him I was prepared to settle with him just as soon as the account could be examined and

adjusted; he claimed $2 a gun; I told him he had no such claim at all, that our interest was a joint one; that if there was a profit he was entitled to his proportion; that we had obtained from the City less than we were entitled to; that he was ready to settle with him on the basis of returning to him all the capital I had put in, with interest on it, and all the profits; that on a rough estimate the profits would net perhaps $2,000; he flew into a violent passion, and said he would make no such settlement at all; that he must have $20,000, which was the amount he claimed; I endeavored to pacify him; he was very anxious that Mr. Williamson should have something to do in the matter; we met at my house with Mr. Williamson; I repeated my offer, which he declined, and subsequently a suit was commenced in the name of his wife.

Q. Did McNeil say to you that the claim against the city was a great deal too small? A. He did; he said that the claim was too small; that it should be much larger; that they were omitting many things; afterwards met Mr. Hendrickson, the assignee; settled with him for $3,900 and odd; a check of $1,500 had been discovered by Mr. Farlee, which it is supposed had been omitted from the advances by me, which was added to the profits; Mr. Hendrickson settled with me on the same basis I had proposed to McNeil; I said we should have a release from McNeil as well as his wife, as he had sometimes claimed to be part owner, sometimes sole owner; Mr. Hendrickson said he would obtain a power of attorney to sign a release; then he thought there might be difficulty; either he or Mr. Williamson said it was not necessary that McNeil should know for what purpose the power of attorney was needed; I did not propose that; I insisted on having the release of McNeil as well as Mrs. McNeil; they obtained it in their own manner, with which I had nothing to do.

Q. The libel says, "Opdyke disclaimed any interest in the gun claim." Did you before the Supervisors, or anywhere else, to any human being, disclaim any interest in the gun claim? A. I did not.

Q. Did you or not sit in the Committee investigating the claim of your son-in-law? A. No, I left, as I stated.

Q. Was the $25,000 received from the government forgotten in making up this claim against the city? A. No, sir, not forgotten by myself or by any others making up the claim; it was not put in the claim against the city because it ought not; but it appears on the cash book and general assets of receipts and disbursements.

Q. Was any claim made against the city for the guns delivered to the government? A. None whatever; or for the material or expenditure on these guns.

Q. In presenting the claim to the Supervisors did you declare that you had no pecuniary interest in it or not? A. I did not.

Q. I will read again, "To qualify himself to act impartially and honestly for the tax-payers of New York, he disclaims being interested in the gun claim." Did you disclaim being interested in the gun claim or not? A. I did not.

Q. Then again, "A partner after calling the ex-mayor a swindler, prosecutes for a share of the profits, and in his defense, Opdyke made oath that he owns the largest share of the contracts which before the claim was paid he had repudiated." Had you ever made any such repudiation? A. No.

Q. Had you ever repudiated having an interest in that claim?

THE COURT—It is most clear he never did.

Q. Will you state whether or not you repudiated having an interest in the gun claim? A. I never did.

Q. Tell the Jury all about this story they have got up about your having sold the office of Surveyor to the Port? A. I certainly never sold the office of Surveyor.

Q. Have you ever had any conversation with McNeil about getting Mr. Andrews appointed Surveyor? A. None within my recollection whatever.

Q. Did you ever have any conversation with Williamson about getting Mr. Andrews appointed as Surveyor? A. None within my recollection.

BY THE COURT—You may state whether you ever made such a bargain as stated by them or not? A. I never did.

Q. Did McNeil ever say to you that Andrews would give, or cause to be collected from the Custom-House, $10,000 if you would go for Mr. Andrews for Surveyor of the Port of New York? A. Never.

Q. Did you ever say to McNeil "Won't he cheat me?" referring to Andrews? A. I did not.

Q. What were your relations with Mr. Andrews at the time he was appointed Surveyor? A. They were friendly.

Q. How long had they been so? A. For nearly two years, our political relations existed, and had been very friendly during that time.

Q. Will you state whether or not McNeil said to you, if you wanted anybody else to help do this—that is, make this arrangement with Andrews—you should pick your way, and they would go together? A. I did not.

Q. Did you ever pick or choose Mr. Amor J. Williamson for any such purpose? A. I did not.

Q. Did McNeil afterwards ask you if you had seen Mr. Williamson on that subject? A. He did not.

Q. Did he ask you if things were satisfactory, and you said they were? A. The whole of that is a sheer fabrication.

Q. Did you ever tell McNeil that you would drop Mr. Stanton? A. Never.

Q. Did you afterward meet McNeil in Washington, when he reminded you of any such transaction? A. Never to the best of my recollection; I never met him in Washington at all.

Q. Will you tell me whether you met him and Mr. Andrews there? A. I think I never met him at all.

Q. You heard this story about meeting him in Washington, and being tapped on the shoulder? A. That is like the other; that is a sheer fabrication, the whole of it.

Q. Did Williamson ever go on any such errand for you, to make any such arrangement, or be a witness to any arrangement with Mr. Andrews? A. He has not so stated.

Q. Did he? A. No, sir; not to my recollection; perhaps, Mr. Field, I had better state my own recollection of these circumstances.

Q. Did Williamson report to you at your store any conversation that he had with Andrews about your getting him appointed Surveyor of the port of New York? A. He may have reported a conversation he had with Mr. Andrews, but not of that kind that was contained in his testimony.

Q. Anything about your getting Mr. Andrews appointed Surveyor? A. Nothing of the sort that I recollect; I was going to tell you that many political interviews between Williamson and myself, and McNeil and myself, have taken place, and some of them might have had relation to the office of Surveyor of the port, possibly before, but certainly after the appointment; I didn't charge my mind with all the details that occurred on such occasions, but this I know, that I never did, directly or indirectly, with Mr. Williamson or McNeil or Mr. Andrews, make any such; I never did have a conversation with either of them that contemplated the selling of my influence in favor of Mr. Andrews for the consideration of his influence in raising money for the mayoralty election; I would have had to change my nature entirely to do that.

Q. Go on and state what you desired to state about your connection with that office. A. I and others had jointly recommended Henry B. Stanton, and there was another applicant advocated and recommended by others; that was Mr. Wakeman; it was understood the President favored Mr. Wakeman; and the Secretary of the Treasury, in whose department this office was, was in favor of Mr. Stanton; that controversy in relation to the appointment began immediately after the inauguration of the President, and remained in that position until shortly before the appointment of Mr. Andrews; I met him, as he has stated, together with Mr. Ullmann and Mr. Brewer, and according to my memory Dr. Price was with them also, but that may not have been so, in front of St. Paul's Church; Mr. Andrews said to me, "I am going to be Surveyor of this port;" that is the first intimation that I ever had that Mr. Andrews or his friends were applicants for that office; I expressed satisfaction that a friend of mine was to have that place.

Q. What was said? A. I said to Mr. Andrews, "I, as you know, have been a supporter, and am, of Mr. Stanton for that appointment, but if he cannot get it, I shall be gratified that another friend of mine gets it; it will be acceptable to me;"

shortly after that I happened to meet Mr. Barney, and if it is competent to state the conversation which took place, I will state that I said I understood that Mr. Andrews has been, or is to be appointed Surveyor of this Port; he says, "Yes, I believe that is so," and he says, "I intended to have told you about this before, but I have not had an opportunity; it is arranged that he shall have it as a compromise candidate;" this was perhaps three or four days before the actual appointment was made; I never took any part in it, to the best of my recollection and belief, in his favor, but stood as one of those who had recommended and supported Mr. Stanton for that place.

Q. Did you ever say or do anything to withdraw Mr. Stanton? A. According to the best of my knowledge and belief I am confident I did not.

Q. Did you go to Washington to get Mr. Andrews appointed? A. I did not; to fortify my recollection I had the book at Willard's examined; I believe I was not in Washington at all, and I am certain that it was not on that errand; I never wrote a letter to any one for any such purpose; the contribution at the Custom-house was set on foot after my nomination for mayor; I have no recollection of ever asking Mr. Barney myself; it may be that I suggested the propriety of setting on foot a contribution, it is very natural I should, but I have no recollection of it; the day of the election Mr. Keyser came to me and said, "The money that had been promised the Republican organization, of which he was treasurer, from the Custom-house, had not been collected in a form to make the payments; I advanced $2,000;" he said he would advance $1,000; I was told the Saturday preceding that the People's organization had failed to get the promised $3,000, and it was represented that unless the money was advanced the organization could not be brought out to the polls, and we would lose their support; I advanced $3,000; and I advanced various other sums on organizations; my aggregate expenditure during the canvass being a little over $20,000, all of which I believe was legitimately used by the organizations in the city that supported me; I got back $2,000 from Mr. Keyser, and $5,000 through Mr. Churchill, and in about a month $1,480, making the balance I was out of pocket the balance.

Q. Did you ever have any conversation with Mr. Andrews about collecting money at the Custom House? A. If I ever had any with him, it was after my nomination; I desire to state generally that I never had a pecuniary transaction with Mr. Andrews in my life; I never dreamt of making any such bargain as selling my interest to him in return for his getting a collection in the Custom House, and it was not until he entered upon his office that I had any interview with him in regard to the distribution of his patronage; I had previously supported Mr. Andrews for the office of United States District Attorney.

Q. State what connection you had with the sale of articles to the Government? A. They have all been stated by witnesses.

Q. Did you ever "work in" at Philadelphia any blankets that were rejected in New York? A. I never did; we had a contract for 25,000 pair of blankets; which we inspected as usual; about 100 pair of these were rejected for different reasons, and were sold by us at private sale.

The witness was examined in relation to the cloth purchased of Spaulding, out of which the 28,000 infantry coats were made, and went over the same subject as to the cloth not taking a good indigo blue; owing to an error in transferring the contracts 4,000 coats too many were made, which were not accepted; the firm lost over $7,000 by the whole transaction, and Mr. Smith $,5000.

Q. Did you have any secret partnership for army cloth, blankets or gun contracts? A. Not secret; Mr. Carhart has stated his connection with Opdyke & Co.; in consequence of delay in payment the capital had to be very large; the profits were small and business vexatious; the next season we returned to our regular business, and I have had no interest in any Government contract, direct or indirect, since, save in this armory, if it can be called a contract; my individual interest was about one-third (34 per cent.) of the $172,000 made by Opdyke & Co.; I never forestalled the market for cloths required by the Government, and never attempted to do so; there were a dozen houses in the trade larger than ours.

Q. Did you ever remind General Fremont that, when he ran for the Presidency, in 1856, he was weakened by pecuniary embarrassments? A. No, sir; I never had any political conversation with him, personal to himself.

Q. Did you say that, as his friends intended to run him again, it would be well to put his affairs into better shape? A. I never told him any such thing.

The witness went into a statement in regard to the Mariposa matter—the same, in effect, with that given by General Fremont. There were negotiations in relation to the perfecting of title and ascertaining the amount of liens; the whole affair was involved in almost inextricable confusion; so doubtful were the advantages of the arrangement, even when finally consummated, that the witness declined to take the whole share (over one-third of the one-fourth of the estate) allotted to him, and one-fourth of his share was given to Mr. Crawford.

Mr. Field read, in evidence, some telegrams passing between Ketchum, Opdyke and Fremont, in New York, and Mr. Hoey when in California.

The cross-examination of Mr. Opdyke was reserved till to-morrow.

TESTIMONY OF FRANCIS C. CROSS.

Francis C. Cross, called by the plaintiff, sworn—I reside in New York; am dealing in machinery; have been familiar with the prices of machinery, including milling machines; in 1861 they were in great demand, from $175 to $600; in July, 1863, there was such an advance that I could not make contracts; this was worse in relation to milling machines than others, in consequence of gun contracts; the market advance on machinery from December, 1862, to July 1863, was 50 per cent.; a greater demand for gun machinery than any other; it could be disposed of in workable order. I know Mr. Stover; have dealt with him; have heard his character for truth and veracity spoken of; never heard him spoken of otherwise than as a man lacking in veracity; his general character for truth and veracity among those whom I have heard speak of him is bad; I have heard twenty persons speak of him, and have avoided him on that account; I would not believe him under oath.

Cross-examined—(Mr. Henry D. Stover shown to witness)—I cannot swear him to be the Mr. Stover I have spoken of; he is somewhat changed; I believe him to be the one; the one I speak of was in Fort Lafayette.

Adjourned to 11 o'clock to-morrow.

FIFTEENTH DAY.

WEDNESDAY, JANUARY 4TH, 1865.

TESTIMONY OF MR. OPDYKE CONTINUED.

George Opdyke *cross-examined by Mr. Evarts*—I came to this city in 1824; have resided in New Orleans six years; Cleveland, Ohio, two years, and for some years had my residence in New Jersey while engaged in business here; returned here in 1853 or 1854; have resided here since that time; have had business here since about 1841.

Q. When first did you appear in political or public life? A. I think I was a candidate for the Assembly in 1857 or 1858; that was my first active connection with political life; I was not then elected; in the year following I was elected; was in the Legislature one session, 1859; the ensuing autumn I became a candidate for Mayor of this city; was a candidate for nomination for the Senate that same autumn; but not nominated; was not elected Mayor; two years following, in 1861, I became a candidate for Mayor; meantime, I think, some of my friends suggested my name to President Lincoln as a fit person for Secretary of the Treasury; it was not of my volition; I was suggested for the office of Collector of the Port, also, without any authority or consent; after my term of office for Mayor expired, I was not a candidate for any office, and hold no office now; from the time of the election of Mr. Lincoln to my election as Mayor, I joined others in recommending persons to various offices; I was in Washington during the inauguration, and two or three days subsequently, and occasionally visited Washington afterward; can't say how frequently from March, 1861, to 1862; I have no distinct recollection of the num-

ber of times, or the length of time I stayed; I do not remember going in company with others, after the inauguration, in relation to appointments; I went in relation to financial business; with the Secretary of the Treasury and Navy I was on friendly, personal, and political relations; so continued with Mr. Chase up to the time of his leaving office; I have no recollection of going to Washington to influence appointments later than March, 1861; I may, while here, often have spoken in favor of some one; I think after that there were very few places to fill; I do not recollect my appointments to be made or urged; my interviews in regard to financial policy were with Secretary Chase, in company with others; I also had a correspondence with him in regard to the best financial policy; there was no special intimacy between us, but very friendly terms; I have no distinct recollection of having exerted influence to have any one removed.

Q. When in Washington did you exercise your influence to have Collector Barney removed? (Objected to—excluded)

Q. When this factory was destroyed, what did you do toward ascertaining what there was in it that was burned up? A. I had no personal superintendence; I directed Mr. Farlee to take early and proper steps to ascertain and make out as correctly as possible, through foreman and book-keeper, an inventory of what was lost; I have no inventory save the claim presented to the city; that was the ultimate result of the efforts to ascertain; I asked Mr. Farlee to try and see if an inventory could be made up of the things that were in the factory when it was destroyed; finding that was impracticable, I conferred with him as to the propriety of making out the matter in the way it was; an intermediate suggestion was to make out total investments and deduct from it the total receipts; the first plan proceeded no further than my directing Mr. Farlee to make out such a statement; he thought it impracticable; I have no recollection of any figures towards such a schedule; those in charge said it was impracticable, from the absence of books and papers which had been mainly destroyed, and multiplicity of articles from raw state to finished article; those are all the difficulties I recollect; then my mind turned to the plan of finding the advance, and outlays, and receipts, to show the amounts we were out of pocket by the transaction; the means of making that computation I had a perfect record of, knowing how much I and McNeil had advanced; if it had been presented in that form it would have been on the principle of returning to us the net balance of payments and liabilities over the receipts; that plan was abandoned as an illegal method, and the authorities could not make a settlement on that basis; do not recollect conferring with any one but Mr. Farlee on that subject.

Q. After that was abandoned were you without a plan until Jones stepped into your office and suggested one? A. We were still considering how we could best get an accurate inventory of the property lost; we had not hit on anything definite, that I remember, until Jones made the suggestions; I think it had not occurred to me; it first came from him; his suggestion only related to the carbines; so far as I remember, Jones did not give the figures; he had no access to my accounts; he was a man I had no confidence in; all the advances do not appear in the cash-book; during December and January, when I made advances of about $40,000, the cash-book shows only about $30,000, the balance having gone to pay Marston; that should have gone in the books; it enters into the sum stated as the amount paid Marston, but not entered into the sum claimed against the city for machinery, &c.; Jones suggested the mode of charging the contract price of the guns, less the amount it would take to complete them; that is the substance; of my own knowledge I do not know that Mr. Jones had any interest in making this suggestion; I do not think I asked him what advantage there would be in making up the claim in that way; the plan he suggested struck me as a just and proper method; that it would embrace not only the value of the articles, but the profits, if any, that were earned.

Q. You say that mode would embrace all the profits as if the number of guns had been completed? (Objected to.) A. So far as those guns were concerned, it would, provided we had not allowed more than what was assumed to be the actual cost of completion; there was 12½ per cent. allowed in excess of the actual cost of completion.

Q. That mode would include the materials in the guns, the labor spent on those materials, up to the stages to which they had gone—the royalty which would be payable on the guns, and the profits, if any, which would come to the parties interested? A. I think that is correct, so far as those guns are concerned, always abating 12½ per cent., which was allowed in excess of what was assumed to be the actual cost of finishing.

Q. What plan was there for selling out the property other than the carbines? A. It was to make an inventory of the property itself, and the price was charged at the price it had cost the concern; the plan did not include all the outlay; it left out the current expenses of the establishment—rent, fuel, pay for Superintendent, clerk hire, &c., and others that were not working on the particular contract; it left out the tools that had been made and broken, or were found inadequate, and others had to be made in their places; Mr. Keene told me there were many parts of guns and small things which there were no means of ascertaining.

Q Does the schedule profess to include any of the material that enters into the fabric of the guns? A. I think not; I believe there is some steel.

Q. Can you show in the cash-book or any other record of outlay for the purposes of this business and this factory, any sum for material, for tools and work, and labor on tools, and keeping up machinery, that is not in the schedule? A. I have not particularly examined the cash-book, and cannot say what is there.

Q. You have stated, I believe, on direct examination, that the cash-book contained a statement of all the outlay and all the receipts of cash in this business? A. You misapprehend me; I said the statement of profit and loss contains it all.

Q. Will you point me to the entry in the cash-book which concerns or relates to the receipt of any money from the Government of the United States? A. Here is one item on the Dr. side of cash-book, page 20: "June 29—Cash Dr. to the United States Government—received draft on Sub-Treasury in New York, dated Washington, June 27, No. 264—$15,379.50;" on the credit side, same page, is the entry: "Cash Cr. by G. O., loan amount, $15,379.50;" I would like to explain that.

Q. What amount of outlay appears subsequent to July 13? A. The aggregate amount is over $6,000 or $7,000.

Q. Can you state any greater difficulty in stating the material in the factory and the amount of labor that had been expended on this material in the unfinished carbines, than in stating the amount necessary to complete them? A. I cannot see any difficulty that would exist, greater in the one case than in the other.

Q. You say you consider the principle on what the claim was made up just as fair against the city. Why would not giving the material in the factory and the labor expended on the unfinished carbines in the various stages, have been a proper mode? A. The armory had been in existence nineteen months; was started for the exclusive purpose of producing Gibbs's breach-loading carbine; all the expenses for that time were made with a view of producing that result; it required a large amount of capital, employed in a hazardous business; we had just arrived at the condition of producing the guns—were just ready to produce the article we designed when we started; the time, money, labor, outlay, capital, and hazard expended during the nineteen months to produce the guns, was entitled to profit, if any were made, as far as we had gone; it could not be expected that the manufacturer who had changed the form of material from the raw to the finished article of utility, should forego whatever profit existed; it would be entirely unjust; we felt what we were entitled to was to replace the establishment in the position in which it was.

Q. What was the difference between the result of this mode and that which you had rejected, except that this included profits as well as outlay? A. That was the difference; the one would be returning the capital simply—the other would embrace the profits, if any were earned.

Q. I understand you to have said that in this carbine account there is a computation only for the 6,000 carbines, and not including any part of the 1,050 not delivered. Will you show how there was omitted from the preceding schedule of machinery, tools, &c., which foots up $97,000, anything that went for the cost of machinery, tools, keeping up and replenishing tools, and cost of carrying on the

concern, that was applicable to the production of the 1,000 that were delivered to the Government? A. It is omitted from the claim against the city for the reason that it had no business there; it would be a fradulent claim to put it in.

Q. (By the Court.) Here is $17,000 paid for keeping up tools; can you state whether or not that did not include all the tools for making these guns delivered to the Government; if it did not, can you point out anything that was left out? A. I suppose that all the expenses on tools and machinery are not embraced in the $17,000; the equipment was by no means perfect when we bought out Marston, if it had been we could have made guns immediately; many tools were produced originally; I suppose the machinery was competent to run for years, and the tools also, with the necessary repairs; they were capable of making, say 100,000 guns, before they were worn out, so that 1,000 would involve 1-100 of their value; I think the machinery was competent to make 300,000.

Q. Now I want you to point out something in the shape of material, or labor, or machines, or tools, that money was spent for in that factory that went to the 1,000 guns, and is not included in these schedules? A. I cannot name an item there, for it has been destroyed; I can only state that the items charged to the city were items that were put into the cost to the city, and that the items in the Government guns have nothing at all to do with them.

Q. (By the Court.) I understand you to say that you are not able to state whether, in making up this account, there was any deduction made for the wear and tear of tools and machinery in making those guns? A. That is the precise point; my impression is that no deduction was made; the question was whether a much higher price should not be charged on account of the increase in the value.

Q. What was the whole amount of your advances up to the 13th of July, irrespective of your liabilities for bills unsettled? A. The amount of the small payments made after that date was about $3,000, which would leave $193,000, including interest.

Q. So far as the cash-book contains your advances, was there any deduction apparent on account of the $12,615 due from the Government, and not received till September? A. I do not see anything in the book now; there could not have been, for the reason that it had not been received from the Government.

Q. The $15,000 received from the Government does not appear on both sides of the account, and is not so carried through, increasing one side as much as the other? A. Certainly, it stands as every item received and paid out.

Q. The result of the balance is the same as if it had not gone in at all? A. A. Certainly; it is self-evident.

Q. If you had received $207,000 from the city, on how many guns would you have received the royalty? A. My recollection is 6,000.

Q. Why would not that in that case have belonged to Brooks? A. There was one reason why we should have claimed in equity an abatement, and that is because the progress of the work was arrested at a period when the result proved no real profit was made, and because if he had got the whole royalty it would have been a very considerable profit on his patent, while we would have been losers.

Q. Suppose you had delivered them to the Government, and had lost money, would not the money have belonged to Brooks? A. It would, and I should have have claimed in equity some abatement, because he was incidentally interested in the factory, as every gun afforded him a profit.

Q. Why did you carry the whole amount of the deduction to the royalty, and not divide it pro rata? A. I have given you the reason; we claimed an abatement because we felt that he should be a common sharer with us.

Q. You carried to him all that was docked, and how much besides? A. The whole abatement he made was $10,000 out of $26,000.

Q. How much did you fail to receive from the city and Government less than what you paid out, as ultimately settled? A. The net profit to the proprietors was about $2,400.

Q. That does not include the $2,000 proceeds of the auction sale? A. This statement embraces all the money that I received; Mr. Farlee has stated what he did with that.

Q. Did you examine this claim before it was presented? A. I did not critically,

because I should have had no knowledge of its details if I did; I think it was shown to me.

Q. Were you present at any examination of witnesses before the Board of Supervisors? A. I was not; I heard that it was going on, but the manner and the matter I knew nothing about.

Q. What were your relations with Mr. Williamson in 1861 and prior? A. I was acquainted with him during the Charter election in 1859, if not prior; he was a political friend and supporter of mine; our relations subsequent to 1861 have been less intimate and cordial for reasons he may know better than I do.

Q. When did you become acquainted with McNeil? A. He was introduced to me by Williamson, I think, during the Charter election of 1859, as an active member of the American party; he seemed to be a very active supporter of me through the canvass; in 1861 he still professed to be my supporter, politically, and he seemed to be very active; I had learned at that time not to place any great confidence in him; he often called on me, seldom at my house until after the gun matter.

Q. When did you become acquainted with Mr. Andrews? A. In 1859, I think; he was my supporter in 1859 and 1861.

Q. When did you become acquainted with Mr. Stanton? A. I knew him, politically, about the same time; he and I belonged to what was called the radical wing of the party.

Q. What did you do toward Mr Stanton's support? A. I cannot remember precisely what I did; while at Washington, I, in conjunction with other friends, pressed him to the favorable consideration of the President, either through the Secretary of the Treasury or else upon both; I do not remember any other efforts of mine after that; I cannot say whether I wrote letters on the subject, nor do I remember going on again to support him; I may have urged him while there, but I have no recollection.

Q. When during 1861 did plans begin to be laid for your nomination? A. My own recollection is that it was not till about the time of the State Convention, in October, that I consented to permit my name to go in; many of my friends had urged me to let my name go into the canvass; having been run and defeated in 1859, they felt that it was desirable to the party and to myself that I should consent to be a candidate again; I never had any desire for the office, never wanted it, and it was with great reluctance that I consented to run either the first or the second time; after receiving my nomination I withheld my acceptance for a considerable time—I think more than a week.

Q. Did you take any active part in the distribution of offices in the Custom-house after Barney was appointed? A. I took an active part in what I considered to be deserving appointments; some of the applicants were not my friends, but were active, deserving members of the party.

Q. Do you recollect a conversation concerning the appointment of Surveyor, in which you expressed the opinion that Mr. Chase would not make the appointment without conferring with you? A. I have no recollection of such a conversation; though I frequently saw McNeil—they can scarcely be called conferences; I recollect Williamson being at my office that summer, as he had been at the prior canvass several times, but the precise subject of conversation or conference I cannot remember, though I have canvassed the matter over and tried to remember; McNiel had a son a clerk in our store, and frequently came to see him.

Q. When did you first inquire whether collections were made at the Custom-house in behalf of your election? A. I think not till after my nomination; I may have seen Mr. Barney before, but I have no distinct recollection; I knew some of my political friends had, and that they desired to have funds raised; I think the first authoritative, distinct information I had on the subject of money being raised was from Messrs. Churchill and Cowdin.

Q. Did they not go at your request to the ustom-house? A. My own impression is that they went there of their own volition, but their impression is otherwise; you may assume it either way; I think I expected aid from the Custom-house from the time of my nomination, which was from ten to fourteen days before the election.

Q. In July, 1861, how frequently did you see McNeil and Williamson? A. I was out of the city a portion of the summer, and the occasions could not have been very frequent; I thing they were both urgent that I should consent to be a candidate for mayor, and that the matter of patronage at the Custom-House was spoken of, as well as all subjects of political interest at that time; I presume the subject of surveyorship was spoken of, if they called upon me before the appointment was made; I knew Andrews to be a capable and active man; Mr. Dennison never participated very actively in politics; Mr. Barney had to a considerable extent.

Q. Did you regard Mr. Barney as a managing politician? (Objected to and excluded.)

Q. You were in Washington in July, 1863? A. According to my best recollection, fortified by a note from Mr. Willard, I was not; I remember seeing Andrews there once, after he was Surveyor, at the office of the Secretary of the Treasury, during the winter; I think he usually stops at Brown's Hotel; I do not remember seeing him there with Charles Cooper and McNeil; my impression is pretty strong that I never saw McNeil in Washington at all; he took some samples of blankets from our firm to sell at a stated price; he went twice, I think; how long he remained I do not know.

Q. You say that you recollect nothing about Williamson's interview on the subject of Andrews? A. I recollect nothing about his saying it was satisfactory, and I do not believe it ever occurred, because he connects it with the declaration that I had employed him as agent to negotiate a bargain with Andrews—I to give my political influence toward his appointment, and to raise or cause to be raised from the Custom-House a sum of money for my election—all of which is utterly ungrounded.

Q. You consider the conversation between Williamson, yourself and McNeil on the question of contributions from the Custom-House through Andrews' appointment as without foundation? A. The essential portion of McNeil's testimony, on the matter of bargain, being absolutely and unqualifiedly untrue, I take it for granted that all the details and accompaniments are also untrue; Williamson has only testified to a single interview on the subject; he don't remember the words that he or I used; he simply relates the substance; now, if he meant to convey the idea that a bargain was consummated on the part of himself, McNeil, and Andrews, such as was stated, that is untrue.

Q. Suppose he said that if Andrews was appointed you might rely on his support, with the patronage and money of the Custom-House? A. The matter of money, I am certain, was not referred to at all; something may have been said about patronage either before or after Andrews' appointment, and his being a compromise appointee—whether he would throw it in favor of the radical or conservative wing of the party; a day or two before election Williamson, McNeil, and others of the People's Union party became very restive because the money promised was not forthcoming, so as to enable them to bring out their boxes and men at the election; and I remember hearing Williamson express disappointment and I think unfriendly feelings towards Andrews.

Q. Do you remember complaining to Williamson at your store that the Custom-House had only raised $7,000? A. No, I could not have claimed that because they raised more; I may have said that the promise was to the committee of citizens $10,000 or $12,000 and it turned out only $9,500, involving therefore a larger expenditure on my part than I expected, but I have no distinct recollection of ever saying anything to him on the subject; probably I would not remember it if I had; it was an immaterial point.

Q. Have you thought of any other contracts with the Government than those already stated by the witnesses in which you had an interest? A. I have thought of none other.

Q. Were you interested in contracts for arms from abroad? A. Never.

Q. What contracts were open in the name of yourself or your firm? A. We had two or three with Col. Vinton, one for infantry cloth and one for flannels, two or three for blankets, all open—those are all I now remember.

Q. Did you become surety for any of the contracts that have been spoken of?

A. I did in the contracts with Smith Brothers and Carhart, and also in many in which we had no interest.

Q. What did you net on the sale of the 4,000 garments that were returned by the Government? A. There were 16,000, of which some 3,500 were rejected; I sold 100 of them at $3, and the balance at $2 50, less five per cent.; our loss was about $7,000, and Smith's $4,500, making $11,500; I think there was a small profit on those accepted.

Q. Did you ever declare during 1861, 1862, or 1863, that you had no connection with Government contracts? (Objected to.)

MR. FIELD said the object was to get in the letter published in *The Albany Statesman*.

The Court allowed the question.

A. I did so declare; on the 25th of September, 1863, I declared. (Objected to.)

Q. Did you so declare orally, subseqently? A. I may have done so, because it would have been strictly true; I never declared that I had *had* no interest in Government contracts, but from that day to this I have had no interest in them.

Q. Did you in September declare, "I have no Government contracts, nor have I any business connection with the Government of any kind, direct or indirect?" (Objected to, the writing being the best evidence.)

Counsel for defendant offered to show that the witness had so stated, and also these words: "But you will be astonished at the mendacity of the charge when I inform you that those contracts, like the office of my son, exist only in Mr. Weed's imagination." (Objected to—excluded—exception taken.)

Q. Did you declare before the 25th of September, or on that day, or after that day, in the year 1863, to any person or persons, that you had no Government contracts or any business connected with the Government of any kind, direct or indirect, except in this letter? A. I have no recollection of having made that declaration; but I might have made it with entire truthfulness.

Q. When did this Government contract for guns, in which you were interested, by its own terms, expire? A. The period I cannot designate without having the contract before me; but I believe, from reading the contract and from Mr. Farlee's assertions, that there was nothing obligatory on the part of the contractor to continue the business, or to deliver a single gun, longer than he desired; and immediately on the destruction of the factory I gave notice to Mr. Farlee that I would have no further connection with it. At the rate we were turning out guns (fifty a day) it would have taken about six months to complete the contract; the money was paid on the average about 6 or 7 weeks after the delivery; the last payment on clothing contracts was, I believe, as Mr. Carhart stated, in July or August, 1863.

Q. You say if you had stated to people that you had no interest in Government contracts, it would have been true. In what respect would it have been true—that your contracts had ceased? A. It would have been true in the present tense, as this letter was written.

Re-direct.—The ledger which has been produced was brought to the Mayor's office after the claim against the city had been made out, and to my best recollection after it had been settled, by a poor woman; she appeared confused, and unwilling to answer inquiries, from which I supposed some of the rioters had taken it.

Q. If the $28,000 received from the Government had been put on the credit side of that account, would there not have been a debit of the guns themselves, as manufactured, to be delivered? A. Undoubtedly so; the two would have balanced each other; neither of them had any right in the claim against the city.

Q. Was or was not the wear and tear of the machinery and tools in the construction of the guns delivered to the Government actually included in the claim? A. I have already stated, on cross-examination, that I know of no abatement that was made on account of the wear and tear; but the first 550 guns delivered to the Government were charged at $3 each more than was charged to the city.

Q. Was or not the $16,000 allowed to Brooks for royalty all profit? A. He had invested nothing in the factory; I do not know what the patent cost him.

Plaintiff closed, reserving the right to produce a record sent for to Washington, under commission, if it arrived.

ROBERT C. HUTCHINS RECALLED.

ROBERT C. HUTCHINS was recalled by the defendant—Q. Did you hear what Thomas C. Fields said to Mr. Blunt when the Farlee claim was presented? A. I recollect Mr. Fields being present at the time; he objected to the passage of the claim, and said he wanted some gun men examined; I cannot state the words—that was the language; he was very emphatic about it; he wanted some gun men examined.

Cross-examined—This was at the meeting of the Committee at which the claim was considered and passed upon; I have given Mr. Fields' language as far as I can; Mr. Blunt was at the table,—and other members; I can't say what the others said; I think Mr. Blunt said something.

ANDREW BLAKELEY CALLED.

ANDREW BLAKELEY, a resident of this city for 54 years, a politician for 30 years, belonging to the Union party, and formerly a Republican, was called to prove that there was never an instance, previous to Mayor Opdyke's election, in which the Custom-house had been assessed for a mayoralty election. (Objected to and excluded.)

GEORGE W. QUINTARD CALLED.

GEORGE W. QUINTARD called by defendant—Have lived in New York twenty-five years; am proprietor of the Morgan Iron Works; have known Henry D. Stover seven or eight years; have always heard him well spoken of; I would believe him under oath.

Cross-examined—Have had no dealings with Mr. Stover for four or five years; have heard he was confined in Fort Lafayette; have heard one person say he was a man of bad moral character; can't say I ever heard any one talk about his character for truth.

REV. AARON H. BURLINGHAM, D.D., CALLED.

The REV. AARON H. BURLINGHAM, D.D., Minister of the South Baptist Church in Twenty-fifth street, was called to support H. D. Stover's character. He stated that he had a pew in his church for two years, and had the reputation of a good character; would believe him under oath.

Cross-examined—Is he a constant attendant at your church? A. Well, I think he might be more faithful. [Laughter.]

Q. Is he not a very backsliding member of your congregation? A. No, I should not style him so.

Q. You have worse in your congregation? A. The counsel will remember that I live in New York. [Laughter.]

Q. Have you never heard anything against Mr. Stover's character? A. No, sir; have heard he was in Fort Lafayette; have heard it was connected with Government contracts; never heard his character spoken against, except in relation to this Government business.

HEZEKIAH J. MONROE CALLED.

HEZEKIAH J. MONROE, of Staten Island, stated he had been acquainted with Mr. Stover about six years; as far as he had heard, his reputation was good; would believe him under oath.

GEORGE W. WALGROVE CALLED.

GEORGE W. WALGROVE, of No. 17 Suffolk street, clothier, called on the same subject, knew little more of Mr. Stover than that he had made his clothes and he paid for them.

MR. FIELD—It is suggested that this gentleman having made his clothes, knows his *habits*. (In which flash of wit and the laughter it occasioned, the witness retired, and the testimony closed).

Adjourned to 10 o'clock to-morrow.

SIXTEENTH DAY.

THURSDAY, JANUARY 5TH, 1865.

ARGUMENT OF COUNSEL—MR. PIERREPONT FOR DEFENDANT.

MR. PIERREPONT, in opening his remarks, paid a tribute to the Court and Jury; a Court so patient, so even-handed in its justice, so able and ready in the disposition of every legal question, invites our sincerest admiration; and a Jury so unwearied in attention, so prompt, so apparently desirous to learn what was the honest truth of the case, I have never seen equaled. It is with sorrow that any right-minded man feels himself compelled to prosecute his fellow man for crime of any kind, but there comes a time in the life of every man, when he must choose between being a coward for his ease or a brave man for the right, when duty becomes a cross, then is the test of true courage manliness.

That cross is increased when it brings a man in conflict with those against whom he has no feeling of ill-will. This controversy is the culmination of a feud of somewhat ancient date. It is a family quarrel, and like most family quarrels, very bitter. I have no part in that; I belong to a different political organization—one that has its own quarrels bitter enough you may be sure, but one in which when an individual gets worsted in a conflict with another, he bears it like a man, and does not run whining to a court for a salve in the shape of damages to cure his wounded reputation. As you have seen from the evidence quoted from the libels themselves, as well as from other evidence in the case, Mr. Weed was the party upon whom the attack was first made. He was assailed as "the father of the lobby," the "corrupter of public morals," the "contriver of various corrupt schemes," a "coarse fellow," as engaged in the fraudulent charter of the steamer Cataline; all which and much more was reiterated in the public newspapers—barking and snapping continually, until Old Thurlow turns, and with one snap of his whip sends his assailant whining to a court of justice, in search of a greenback plaster to cover his smarting wounds. Is that a manly way in which to act when worsted in a political feud?

But this cause involves a higher question, a question of public morality, a question of political responsibility. Whether the corruptions of men in office can be exposed; the freedom of the press—the greatest question that ever came before the world—whether our free institutions shall continue, or corruption shall destroy them, and liberty perish forever off the face of the earth. This, gentlemen, is a time of civil war, and do you suppose there can be a great civil war which will not shake the great foundations of the nation? The war on battle-fields will in a few months be over, but the war of ideas has just begun; and when the bells shall ring in the joyful news of peace, beware lest they ring in a peace without liberty. The charge which the Court will give you, will be of more moment than the order any Major-General has issued, and your verdict will be vaster in its consequence than the issue of any battle. The instinct of the people tells them so; and even the march of Sherman and the attack on Wilmington were not able to avert the attention of the people from this issue.

It has even excited the attention of the religious community, so much so that it has been spoken of in the churches. (The counsel was about to read a report of some pulpit remarks, when Mr. Field interposed, and it was ruled out as irregular.)

Gentlemen, the counsel for the plaintiff has stated in your presence that The World newspaper was sued for the same libel, and the damages are laid at $50,000, the same sum as Mr. Weed is sued for, so that, if successful, Mr. Opdyke will make money by these suits almost as fast as out of his secret contracts with the Government, or out of Mariposa stock, or out of his fraudulent gun claim on the city. In Mariposa it is shown that he did not invest a dollar, and he has made $800,000 or $900,000.

Now sane men do not act without motive. Perhaps personal feelings had something to do with it; but the great motive for this suit was the love of money. If not for the sake of money, why drag Mr. Weed into a civil court, instead of having him punished in a criminal court? Let these suits prevail, and tell me how much

of civil liberty the people have left. No man can longer speak but in cautious whispers of the corruptions of a man in office; no newspaper dare expose a word of it; the press is muffled; the voice of truth is hushed; corruption and fraud hold up the terror of the Court against any man who shall expose them; justice and liberty have left America for cheats and scoundrels to revel in.

Counsel went into a consideration of the wrongs often unavoidably committed on the liberty of individuals in a time of civil war, citing the example of Henry D. Stover, confined in Fort Lafayette for five months, and he says, on a charge trumped up at the instigation of some contractors for the Navy in Boston, with whom he had interfered; a charge which the Government was now convinced was unfounded, and was doing all it could to repair the injury committed; also, the case of Mr. Henderson, Navy Agent of New York, whom he spoke of as a man of high religious character, one of the most moral, devout, and best men that ever lived, who was a close purchaser for the Government, and having refused to go into open contracts with a party to enable him to make more money out of the Government, he received notice that if he did not pay $20,000 at such a time and such a place, he would be prosecuted. He was prosecuted and indicted; and Mr. Weed, like other citizens, supposing he was guilty, mentioned his name in the articles containing the alleged libel. Having on this trial discovered his error, he would do all he could to repair the great wrong done Mr. Henderson.

This, continued the counsel, is a time of civil war. The tree of liberty is not growing very vigorously just now. Give a verdict which will muzzle the press, and you will find next year it is dead. You may water it with your tears, but it will not survive. This is a public question. Is it not right to expose the frauds of men in public places?

If it is right to expose them, then it is wrong that Mr. Weed should be punished for exposing them. He ought to have a monument rather. The only tribunal before whom such offenders can be brought is that of public opinion; and the only instrument we can use is the public press. Will you destroy that? You may not agree with Mr. Weed in politics. But go where Thurlow Weed has lived, talk with all classes of people, from the poor woman in the market-place to the rich man in his mansion, with his warmest political friends and his most bitter foes, each and all will tell you that there never has lived on this continent a man who has relieved more humble people in their necessity, who has sympathized more with men in their sorrow, who has done more unselfish acts of kindness to his fellows. He has been the maker of Governors, of Senators, of Ministers of State, of Presidents. He has held great power. He might have amassed great wealth, and yet he has lived all his life long in the most simple, frugal way. The only luxury in which he has ever indulged, is that of spending money freely toward relieving the wants of the poor, for whom his heart has always warmed in sympathy. I speak what all men know. When he dies his funeral will be followed by numberless friends; the grass on his grave will long keep green, watered by the tears of grateful hearts. He has exposed the wrongs of Mr. Opdyke while in office. Will you find him guilty for it? If so, you can crucify your own best friends. When Mr. Weed returned from Europe, where, together with Archbishop Hughes, he had rendered the country great service, the freedom of the city was voted him. When this trial is over the freedom of the city will be voted him again, and George Opdyke will not veto that resolution. The question has been asked a thousand times, How dare Mr. Opdyke bring this suit? Why, the evidence was all his own, in his own possession; the witnesses we had to call were in his interest; Mr. Blunt was his friend: he did not believe the thing could be proved; and it is a miracle that they have been proved, and more than proved. He did not think he ran any risk. But when a man is engaged in a fraud he always runs a risk, and sooner or later it will be revealed. Now I call your attention to the first part of the article, complained of as libelous: "Mr. Opdyke may enlarge the field of inquiry and look into this alleged sale of the Surveyorship of the port of New York." Suppose there was no truth in this statement, taken in connection with what precedes, ought there to have been a suit about it. But it is true in substance and in fact; and if one of the parties did cheat a little by keeping back part of the price, it does not alter the fact of the sale. When this suit was brought, gentlemen, the plaintiff

must have had in mind the old saying: "The greater the truth the greater the libel." But his friend Orison Blunt, who is a lawyer, should have informed him better, that there has been a change in the law, that the old adage does not prevail, and that when a man has proved the truth of the libel he is protected. Counsel went into a review of the testimony on this point. Could it be believed that McNiel, who had been a member of the Legislature, had been engaged in political life, and a friend of Mr Opdyke, had concocted all the story which he related? As a counterfeit bill was detected by its appearance, so could a jury tell by the manner of a witness on the stand whether he was telling the truth. McNiel was the friend of Mr. Opdyke, and desired his election as Mayor. Mr. Andrews was also his friend, and himself was looking for the Surveyorship. What more natural than that he should go to McNeil and tell him he wanted Opdyke's influence; that he wanted him to drop Stanton and support him.

McNeil says: "How will it be to Mr. Opdyke's interest?" Andrews replies: "I will have $10,000 collected in the Custom-house to help his election as Mayor." McNeil reports this to Opdyke next day. Opdyke seems contented with it, but says, "Will he not cheat you?" "I think not," says McNeil, "but pick your man, and we will go and meet him and have the think fixed." Says Opdyke, "Suppose you take Amor J. Williamson?" Agreed. Next day they see Andrews; make an appointment in an eating-house on the 5th July, in a private room, where Andrews says there was a "spread."

The bargain is there made. Both McNeil and Williamson tell you the same thing, that when they sat down McNeil says, "Well, Andrews, let us go to business." That Andrews entered into the arrangement. When leaving McNeil says to Williamson, "Are you satisfied?" he being Opdyke's picked man. He says he is satisfied. That this went to Opdyke, who expressed himself satisfied. Do you think they have both contrived this story? Andrews, after he gets the office, thanks McNeil and Williamson both for aiding him. Had Williamson and McNeil any motive to be false in this narration? You cannot conceive of any. Go to the Custom-house and see what they do to carry out that bargain. Mr. Barney says he never heard of any money being raised in the Custom-house on a Mayoralty election before this. No one ever did. Federal officers do not hold under the Mayor; why was this assessment made? It was made to carry out the arrangement between Andrews and Opdyke. Barney tells you he was opposed to the whole thing. He had no knowledge of this secret contract between Andrews and Opdyke to assess the Custom-house for $10,000. And what kind of a thing was that for George Opdyke, a man of great wealth, to enter into? To get $10,000 out of the poor laboring clerks of the Custom-house; to do what? To make him Mayor of the city of New York. In heaven's name, if he wanted to be Mayor of the city, why not pay the expenses out of his own money—money got out of the Government and his vast trade? You are told it was all voluntary. Of course, it was very "voluntary." A circular issued by the head of the department. Ah, if any of you were a clerk in the Custom-house, you would find out what a voluntary subscription means. If it is not responded to, it will not be long before you receive a "voluntary" note stating "voluntarily" that your services will be no longer required.

Yes, Mr. Opdyke may enlarge the field of inquiry, so as to embrace the alleged sale of the office of Surveyor of the Port of New York. We have made a brief examination of it, and find it pretty satisfactory.

Counsel reviewed the testimony of Mr. Andrews himself, as on close inspection tending to show the truth of the matter he sought to deny.

The next libel was in relation to the Mariposa estate—that Opdyke, Ketchum, and Hoey obtained $2,400,000. The fact proved was that they received $2,500,000. No one of them but Opdyke had sued for libel. When Gen. Fremont was asked whether any advantage was taken of him, his answer was, "Any unfair advantage? I (hesitating) think not." The business was urgent, the pressure was great, and he wisely took his hand out of the lion's mouth. Gen. Fremont was willing to give two and a half millions to adjust difficulties, and Opdyke and the other gentlemen got each $800,000 or $900,000 for nothing. Gen. Fremont was required to give, in addition to his first agreement, $700,000, out of which Mr. Fields got his coun-

sel fees, and then to give a proxy for a large amount of his own stock, and at last to sell 500 shares at $25 a share, when it was worth about double in the market. Then Fremont commenced an action about $180,000 worth of bonds, which he afterwards adjusted. The next libel was in regard to secret partnerships. It was proved that he made $172,000 out of one batch in a very few months. William Churchill sold to Opdyke three distinct contracts with the Government for clothing, for which Opdyke paid him 12½ cents per coat. Churchill could not get the goods except of Opdyke. Mr. Spaulding sold Opdyke a quantity of cloth which was so bad, as the plaintiff claimed, that it would not take an indigo blue dye; but somehow or other they did work it in. Then there was the contract with the state for military clothing. Mr. Carhart produced a list of contracts in his own name, amounting to $4,600,000, in which Opdyke was interested, and at the same time surety, making as his share $172,000. In Sept., 1863, Opdyke says it was true that he had no contracts—in the present tense. But when a man states, "equally ungrounded is the charge that I have any interest in Government contracts; I have none, direct or indirect, and they exist only in Mr. Weed's imagination," do you not understand that he means I have had no contracts? In regard to the guns, if there was a fraud in presenting the claim, it was to be laid to the Mayor of the city in 1863. It was hoped that a wealthy Mayor would be proof against corruption. But we find him secretly interested in contracts. Instead of guarding the city treasury, he took money illegally from the city and pocketed it. Opdyke went into a contract for making guns, a hazardous business, with which he was entirely unacquainted. Marston, who is making them, requires more and more money, until Opdyke advances $65,000. Then Opdyke buys out the establishment in the name of Farlee. He was then willing to get out of the business at a loss of $10,000 or $20,000. At length his advances amounted to $185,000, when he said he would be willing to sell out at a loss of $25,000 or $30,000. Then came the destruction of the armory. A great effort had been made to show that Opdyke did not connive at the destruction of his establishment. No such charge had been made in the opening. The only thing that he (Mr. Pierrepont) said was that when it was found that the factory was going to be destroyed, the plaintiff felt very quiet about it, knowing that the city would have to pay for it, and that his ruinously-losing and bankrupt concern would be better paid for by the city. Now, all an insurance company would have to pay would be the actual value of the property destroyed; not any prospective profit. While Opdyke was thinking how to make up his claim, Loren Jones came in and suggested to charge the contract price, less the cost of finishing the guns; that would protect the patentees and all. Opdyke had been thinking that he might claim what he had paid out, but he says he thought that would be highly illegal, so he adopts the suggestion of Jones, by which he gets all he put in, with all the prospective profit besides. That would not be illegal! Now Jones swears that he could duplicate all the machinery for $40,000, thus showing an overcharge of $63,000. The cash-book showed that Jones had told the truth in regard to the matter. Only $15,000 had been received from the Government until the 11th of September, so that the balance of the $28,000 was kept out. The $15,000 balances itself in the book. In making up the account they had to estimate the value of the materials for unfinished guns; the value of the different parts of the guns was proved accurately on this trial; now if they had put in an accurate account of the materials destroyed, it would have reduced the claim $63,000. Supervisor Blunt, who had dismissed riot claims with a five minutes' hearing, takes up the claim of Opdyke into his own choice keeping, and in a few days he is nominated for Mayor in Opdyke's place. Mr. Fields, on behalf of the Corporation, was not allowed to cross-examine witnesses or hear the testimony. Supervisor Purdy resigned the very day the claim was passed. Counsel reviewed the testimony of Mr. Farlee before the Supervisors, in which he stated that the articles were charged at the prices they cost to make them, and pointed out several discrepancies in the items as compared with the inventory; among others $3,000 for the model gun, which cost only $500. Farlee had confessed himself in error in his former testimony. He denies that he swore that he was "the entire owner of the claim," and says he presented the bill of sale and stated to Mr. Blunt that it was not pertinent to inquire into the relation of other parties. Mr. Blunt

knew they had been making some guns, and he thought they ought to be credited; so when we asked him, "Was anything said about $28,000 having been received back from the Government of the United States?" he answered thus: "I asked that question distinctly and it was stated that there had not been any, inasmuch as no guns had been delivered; that the guns were ready to be delivered but had not been receipted for." And it turned out that they had received $28,000 at that time. Mr. Blunt swears that he never heard one word about the claim being got up in the mode in which the other side now insist it was. Counsel referred to the testimony of Mr. Keene before the Supervisors, to show that the present theory was not there exhibited. The theory had been changed, and when Opdyke had got all his costs and profits from the city he refused to pay over the royalty to Mr. Brooks, because he says, "if we lost, he should lose also." Upon that principle, if he had bought cloth of Spaulding and made up clothing, and from any cause the cloth had become injured, he should make Spaulding lose; or, if he had borrowed money to go into business, and had been unsuccessful, the lender ought to lose a part of his money. The great question for the jury to decide was, whether a man who, in office, had been undertaking to get, by indirection and by means which the law regards as fraudulent, out of the city, money, when he himself was its trustee and guardian. If the jury should say that that was right, then corruption had overridden justice, fraud triumphed over honesty, and the day of our destruction was near. If these things could not be exposed, then our liberties were gone. Mr. Opdyke sat in the Board of Supervisors while Mr. Waterman's claim was acted upon—then made a great show of honesty when his own claim came up, all the time knowing the fraudulent system upon which it was made out. Mr. Fields took Mr. Purdy aside and said, "This is too indelicate for Opdyke to remain." Purdy then makes a suggestion to Opdyke, and he leaves the room. Gentlemen, the responsibility that rests upon you is the gravest that has been cast upon you in a lifetime. All I ask is that you shall do your duty in a way that when you go out from here you may feel that you have done right, and may be able to tell your fellow-citizens why it is right.

MR. EMOTT FOR THE PLAINTIFF.

Mr. Emott, in addressing the jury for the plaintiff, said he was bound to advert to the manifesto with which the defense began, and contrast the promise with the performance. He had heard that a certain learned counselor of this court, who being applied to by a deputation of citizens for advice as to how to vote, recommended that they should ask for divine guidance on their knees in their closets. He feared if the counsel who opened for the defense had made any such preparation for his opening, there must have squatted close by his ear a tempter in the form of T. W. That opening was marked by the same vindictive malice that dictated these libels—it was even more outrageous. The counsel had spoken of this as the beginning of a revolution. Who was to be the Robespierre, the Marat, the Danton? The intended victims he supposed were Messrs. Opdyke, Ketchum, Hoey, Field, Godwin and Greeley. Mr. Weed struck at these men because he hated them; they were in his way. How many would follow the defendant in a crusade against political profligacy and legislative and municipal corruption! You might as well expect to see T. C. Fields preaching sobriety and good order in legislative bodies. The speaker would not follow the example set by the defendant's counsel and resort to personal abuse. Mr. Weed's character was not on trial. But he would say this: that the community would hardly select such a man to make war upon what his counsel had affected to denounce; they would first demand that he should clear himself of imputations which in the common speech of men make him the very type of the character which he has so boldly attempted and so miserably failed to fix upon this plaintiff. Mr. Weed had sought to thrust his personal animosities into great public questions, and had used the leading papers of the State to gratify personal spleen The counsel in his opening had alluded to the manner of the plaintiff's counsel in opening the case, as being characterized with a want of earnestness. If he (Mr. Emott) had appeared to exhibit any lack of earnestness and conviction, it was his

own fault and not that of his client. It was better to commit that fault than to make an exhibition of forensic ground and lofty tumbling. It must be a miserable cause which compelled a lawyer and a gentleman to descend so far as to repeat the slang of such a man as Charles McNeil, to say that Mr. Opdyke had spurned the ladder by which he had climbed from the lowest walks of life. No man before the defendant had ever dared to blacken the name of George Opdyke. The defendant knew that Mr. Opdyke had risen by energy, capacity and integrity to wealth and public respect. Where did we find the representatives of the class from which the gentleman's client sprung? Were they the creatures of the legislative lobby and the municipal halls who had been thronging this court during the trial, coming day by day to serve their master? "Where the carcass is there the vultures are gathered together." The plaintiff had been charged with motives of avarice in this prosecution. Every successful, thrifty man is called avaricious. But did any one ever hear of a man bringing a libel suit against Thurlow Weed for love of money? The largest verdict would not more than compensate him for the expense, labor and loss of time involved in such a suit. It is idle to talk of avaricious motives in such a suit to reasonable men, as idle to quote Samuel Rogers on the execution of young women in 1790, or De Tocqueville on Louis Philippe. Mr. Opdyke comes here to the Bar of public justice to vindicate his character. He may thank God that he has done it completely; and I know that for that object he will cheerfully pay all that the duty has cost in money, as he has patiently borne all it has brought of renewed insult, and that he will not touch one dollar of the largest verdict you can give him. He does not need Mr. Weed's money; there are Charities in this city that do. Mr. Opdyke knew the wary, untiring, unscrupulous antagonist with whom he must grapple. He knew the facts—just what he had done and designed—the men he dealt with—the whole case. Do you think he would have come here, invited these men to spread the map of his whole life before you, if he had not known that he had nothing to fear from the truth, and that a jury could not be made to believe a lie?

The defendant complains that he is not indicted. It is a strange complaint from him. If he had been on trial as a criminal he would long since have been convicted, for the issue now is not whether this is a libel and a false libel, but how much shall the libeler pay for uttering it We choose to submit that to you and not to leave it to the Court, as it would have been left on a criminal prosecution. The gentlemen on the other side, in their hearts, do not complain of this. Their hope, their purpose it to prevail on you to give a small verdict for a few hundred or a few thousand dollars, and to use that to blast the man they defame and hate. They look for a small verdict to say that George Opdyke's character is worth nothing. That is what they call mitigation. We ask for a verdict that shall forever close their mouths. Let there be no trickery of getting a small verdict on one ground and using it for another.

But this is not all the difference to the parties between this and a trial in the Criminal Court. There Mr. Weed would stand with his mouth closed. He could not testify. The plaintiff has always intended to be himself a witness, and he offered the same privilege to his adversary. Mr. Weed could have told you on oath, how pure and free from malice his motives were, how nothing but public duty impelled him. He could have testified to the efforts which he made to get at the truth and the information which led him to believe Opdyke so bad. He has declined to attempt it. If he could not do it, it is not our fault, but his, and that of his cause. You will see the fairness, however, of bidding his counsel complain of it. The counsel dragged in and read to you a letter of Mr. Opdyke, addressed to Senator Harris. I pass over the manner in which that letter was introduced to you, under the apology which has been made for it. But why was it used at all? It is on its face a reply to a previous attack—a newspaper attack. The senior counsel calls his client and mine newspaper pugilists. There is not a particle of evidence connecting Mr. Opdyke with such a charge, and I will not permit the counsel to give that name to his client. He is not an editor. He did not publish these things to give notoriety to a newspaper, to enliven a political campaign, or to gratify the morbid public craving for slander. It was not in the heat of political feuds, or in discharge of what editors sometimes call their duty.

He went deliberately and of malice, as any other man might, and borrowed

column after column of this newspaper, to serve his malicious purposes. But what is the libel? It is, first, that the plaintiff had made money out of Government contracts corruptly and dishonestly. Counsel proceeded to state the various libels, and his view of the law in regard to them. The rule required the justification to be complete as to all the charges.

The Court stated that he coincided with that view. He was inclined to think, in regard to the charge of making money out of Government contracts, that in some stages of society it might not be libelous, and therefore it was a question for the jury to determine whether it was.

Mr. Emott claimed that the defendant having admitted in his answer both the publication and the meaning of the articles, he was precluded from controverting the sense as much as the publication.

The Court—That would hardly be admitted by innuendo.

Mr. Emott cited several authorities for the law on the subject of libel, and among them the case of Weed agt. Foster, in which the libel was, "paying $5,000 for receiving the appointment of Inspector of Port by Governor Seward." A demurrer was put in, and Judge Harris (now Senator) held it was libelous. The defendant sought to justify by proving that McNeil and Gibbs said there was a swindle. If a man should print that Smith said that Jones was a thief, could he justify by bringing out Smith and making him swear that he did do so. The fact and not the statement must be proved. The defendant's counsel made numerous statements in the opening which the evidence failed to sustain. William Churchill was asked if Opdyke had forestalled the market, as charged by the counsel, and he denied it. So with the charge of dyeing cloth so that it washed out and faded. Mr. Spaulding swears that the goods he sold Opdyke were the best of the kind, and he recommended a dyer, and Opdyke swears that there were no defects in the goods made from the cloth. They were improperly dyed, which was not the plaintiff's fault, but the spotted parts were not made up into garments, as Smith testified. In consequence of making more garments than the contract called for, some 3,500 were rejected. It was said that Opdyke made $172,000 out of the Carhart contracts. The proof was that the firm made that amount out of some $4,800,000 worth of contracts, one-third of which profits belonged to the plaintiff, and no profit at all would have been made but for holding on to the Government vouchers and certificates. The charge of secrecy was absurd. Was there anything discreditable or dishonorable in the Carhart contracts? In answer to the libel with regard to "shoddy blankets," the answer alleges that it was not only blankets but clothing or coats that were referred to—an aggravation of the libel. Now the witness Bacon testified that there were no shoddy blankets known, and no blankets rejected in New York except a few which were always thrown out in every contract. There was an utter failure to justify this charge of the libel. There was no evidence of any unfair dealings on the part of the plaintiff. The libel in regard to the gun contract was, first, that there was a swindle in it. Counsel would show that less was claimed than was legally due from the city. A base and cowardly attempt was made to impute to the plaintiff connivance at the destruction of the armory. It was left to counsel with less responsibility and more boldness, not to say effrontery, to do that, and he could not escape from it by any apology. The counsel sought to make it appear that the armory was a losing concern, and that Opdyke was willing to sell out at a great loss. Such was not the case after Keene had taken hold of the factory. It was then an entire success, and the arms that they were making were such as they had good reason to believe would be in request for other uses than that of the Government. The gentleman stated that the policemen were withdrawn from the armory, and immediately thereafter the Mayor could not be found until he was followed to the St. Nicholas Hotel. Counsel here read a passage from Mr. Pierrepont's opening, and said that either the witnesses had lied in their statements to Mr. P., or Mr. P. had misstated what they told him. The policemen were not withdrawn, but were driven out, their lives being in jeopardy. There was no dispute that Opdyke had invested in the armory $185,000, McNeil $7,000, and that there was some $25,000 of liabilities. The claim submitted to the Board of Supervisors was intended to give the value of the property. The fraud was either in the principle

adopted on the basis of the claim, or the amount, or the application of the principle, or the mode of getting the claim through. Now Supervisor Blunt had a name proverbial for integrity and energy. The minutes of the testimony were very imperfect. Farlee had shown that they were wrong in several particulars—one in regard to a lathe, showing that the minute-taker rather than Farlee was the person to be convicted of misstatement. The witnesses say that the principle upon which it was made out was distinctly presented to the Board, and no man could hardly fail of understanding it. Even the minutes contain the fact that the contract price was settled to be the basis of the value of the guns. The machinery was purchased at a fair price, unless there was cheating on the part of the appraisers. The counsel had exhibited here such parts of the gun as suited their purpose. Were we bound, in estimating the value of property in a factory, to reduce it to the bare value of the fragments? At what stage do we get from the value of the finished gun to the value of the parts? Suppose they had been all finished but the buttplate, would they be worth nothing but the cost of the separate pieces? The question was, whether the plaintiff had a right to charge their cost on their value. If he charged the cost, then $22 was too much for the finished guns; that was not their value in the open market. A great deal had been said about prospective profits. The courts, in speaking of that, refer to future contingent profits of prospective undertakings. That was what the courts condemned.

Counsel contended that, by reason of a riot, the city was not merely in the place of an insurer, but was put in the place of the party who destroyed the building, and the sufferer could recover whatever damage he had suffered, including the profits that would have been made, had the contract been completed.

(Philadelphia and Wilmington Railroad case—13 How. 307; White agt. Moseby, 8 Pickering, 356; 7 Cushing, 516; 3 Duer, 406.)

Mr. Opdyke then had a right to claim against the city the full price he would have received from the Government, less the expense it would take to complete the guns. Had he stood on his rights, and continued the action commenced against the city, he could have recovered the whole amount, on the construction of the law—that whatever the rioters would have been bound to pay, if sued, and responsible, the city had a right to pay. Great fault was found with the cash-book, for what reason he could not see. It showed the facts, and all the facts, that were at the time the entries were made. The plaintiff could have left this gun claim upon the statement of the witnesses as to their proper motives; upon the fact that no profit had been made out of the city. It was enough to satisfy the jury Mr. Opdyke honestly believed he was entitled to the amount claimed. As to the proceedings before the committee, it had been attempted to prove that there was something wrong in passing upon the claim, because Mr. Thomas C. Fields was not consulted, and had no opportunity of examining witnesses. Well, the jury would probably be able to estimate what value the services of Mr. Thomas C. Fields would have been to the committee, and come to the same conclusion that Mr. Blunt had.

The next charge in the libel was that the son-in-law of Mr. Opdyke made a claim for the destruction of the gun factory; that Mr. Opdyke, by virtue of his office, was a member of the committee before whom the claim was made; that he disclaimed (to the committee) any interest in that claim; investigated the claim, and at an early day received a check, and this they urged was not libelous. Now there was not only no proof that Mr. Opdyke disclaimed his interest, but it was not even concealed. All over the city it was known as Opdyke's gun factory. Every one knew he had an interest in it, although not its extent or character. It was as well known as that Weed had an interest in the Evening Journal, or that Horace Greeley was editor of the Tribune. Mr. Opdyke was not a member of the committee. He did not take any part in the passage of the claim, but, on the contrary, retired.

Next came the charge that Mr. Opdyke had sold the office of Surveyor of the Port of New York for $10,000. He would not stop to ask if this was libelous. The principal witness to justify this libel was Mr. McNeil, who was held up as a member of the Legislature and therefore to be believed. Well, perhaps some people might not consider that such a high recommendation. Much had taken place in the Legislature of this State that did not prove the members immaculate. It had been suggested, indeed, that perhaps if this suit could be kept going for the

whole winter, the legislation this session might be improved. The story of McNeil was absurd on its face. Did any one suppose that if Mr. Opdyke and Mr. Andrews wished to enter into the bargain alleged, they would have got McNeil to make it and send Amor J. Williamson as a witness? Was that the way politicians man bargains they were ashamed of to call in two witnesses. Did any one suppose Thurlow Weed ever made a bargain in that way? But the testimony was full and explicit that Mr. Opdyke had nothing to do with the appointment of Mr. Andrews —had not urged it or aided it in any way.

Counsel then came to consider the libelous charge against the plaintiff in relation to the Mariposa stock, that Mr. Opdyke and others had reminded General Fremont that when running for a candidate in 1856, he was weakened by pecuniary embarrassments, pressed him to put his affairs in better shape, and in training Gen. Fremont for the Presidential canvass his grooms received the gratuity of $2,600,000. Now Gen. Fremont showed himself on the stand to be one who fully and clearly understood his own interests, so much so as to elicit a well-deserved tribute from the counsel for the defendant. He had shown that the Mariposa property was so hampered with debts and difficulties, that the best offer he could get prior to this arrangement with Messrs. Ketchum, Opdyke & Hoey was to settle the claim against it for one-half the property. Under the urgent pressure of claims against the property Gen. Fremont made the arrangement with these gentlemen to have the debts paid for one-quarter of the estates. He had explicitly denied any exaction or extortion on the part of these gentlemen; said that he was more anxious to perfect the arrangement than they were; that he saw he must either close the bargain or the estate would all be lost. Here was no pressure, no playing upon his presidential aspirations. Mr. Opdyke had such doubt of the profitableness of the arrangement that he refused to receive the whole of the share allotted to him.

It being now 5 o'clock the Court adjourned till to-morrow, when Mr. Emott will be allowed fifteen minutes on the question of damages, to be followed by Mr. Evarts and Mr. Field.

SEVENTEENTH DAY.

FRIDAY, JANUARY 6TH, 1865.

MR. EMOTT FOR PLAINTIFF (CONTINUED).

At the opening of the Court, Mr. Emott resumed his argument in relation to the alleged fraud in the omission of the $28,000 received from the Government. There was not the slightest evidence to support the allegation. Mr. Farlee did not exhibit to the Board of Supervisors the statement of profit or loss which he had given in evidence on this trial, but he was examined on the subject by Mr. Blunt, and stated the result to which that calculation led him, and in that calculation he was compelled to take into account the $28,000. The item of $15,000 that appeared in the cash-book was balanced, and it had nothing to do with the claim, which was for machinery, tools, and material. In regard to damages, counsel insisted that a small verdict at the end of such a trial and against such a libel would be a repetition of the slander.

Counsel then cited authorities on the law of libel, and closed by submitting numerous requests to charge, the last of which was that the reiteration of the charges in the counsel's opening were also evidences of malice to be submitted to the jury.

MR. EVARTS FOR DEFENDANT.

MR. EVARTS followed on behalf of the defendant. He said that much of the time on this trial had been occupied in overthrowing charges and difficulties which were not made and did not present themselves. Take out from the list of witnesses Messrs. Blunt, Farlee, Andrews and Opdyke, and you will have exhausted all who have spoken to the cause,—all who shed any light upon the relation to the parties, on the subject of the controversy, or the right or wrong of the alleged libels, or the alleged misconduct of the plaintiff. The disclosures of this trial have been felt, by all the honest and highminded, as tending to public good, and by all the corrupt men, as a blow at them in the person of the plaintiff. This action was brought to recover $50,000, not for any pecuniary damage, but to inflict punishment for a public offence. It had been intimated that the plaintiff did not intend to appropriate any of the proceeds of the verdict, but to apply them to

charitable uses. The idea of Mr. Opdyke being the almoner of Mr. Weed's means was ludicrous If Mr. Weed could become the almoner of Mr. Opdyke's resources, he would, doubtless, make charitable use of large sums of Mr. Opdyke's money, as he had done with his own. But the counsel said that the expenses of this suit would hardly be more than met by a verdict to the full amount. Did the plaintiff intend to deduct those expenses before he applied the charity? Counsel dwelt at some length on the subject of the liberty of the press and the law of libel, showing the great progress made in jurisprudence on these questions, all of which was gained by the instincts of the people against the maxims of power and authority. In adverting to one of the earliest trials for libel in this country, where the jury brought in a verdict of not guilty, which was answered by three cheers from the people outside the court, counsel stated that in consequence of that result, the freedom of the city was voted to Alexander Hamilton, counsel for the defendant, and there was no Mayor Opdyke to veto that resolution. [Here there was an outburst of applause in the court-room, which was censured by the Judge.] Counsel then referred to the last great libel suit of Littlejohn *vs.* Greeley, where only one of the jury was in favor of substantial damages. The necessary comments on the conduct of public men permits the invasion of their private affairs, though not of their domestic relations. A good man never, except by mischance appealed to a legal tribunal for protection in such cases. The case of Fry *vs.* Bennett was a peculiar one, where the private affairs of the plaintiff were invaded persistently. Mr. Opdyke had been wholly occupied in the pursuit of gain, and he stepped right into public life from that pursuit, which he had never for a moment abandoned. There were village Opdykes in every hamlet throughout the land. Mr. Weed's career had been the opposite of Mr. Opdyke's. He had avoided public office and yet he had had power. How did he get it? It came from what he had done for others, not from what others had done for him. His thoughts were occupied with matters of great public interest, whilst those who could not appreciate him imagined that he was brooding over private and selfish matters. Hence they sought to drown him with aspersion. The organs of the party to which Mr. Weed belonged opened upon him, and sought to drive him out of the position of public influence which he had enjoyed for half a century. The slander in regard to the steamer *Cataline* was exploded. Then he undertook to unmask his defamers, and among them this plaintiff, who was presented here rather in the attitude of a defendant. This alleged libel was aimed at a whole tribe. It was a familiar suggestion, that the presumption always was that the plaintiff in a libel suit had just cause. But that presumption was unfounded. It was more likely to be the fact that he sought to escape from the presumed truth of the charges, by getting a nominal verdict. It was because there were no epithets, no abuse, no adjectives in the simple statement of the points in Mr. Opdyke's public conduct, that it was felt. When Sancho Panza got sorely beaten in one of his master's encounters, Don Quixote consoled him by saying: "The reason thou feelest that pain all down they back is, that the stick with which thou wast flogged was of that length." The articles claimed to be libelous are both in reply to prior attacks. The first article is headed, "The New York *Evening Post*." The *Post* had called Mr. Weed a burglar in the matter of the *Cataline*. Mr. Weed refuted the *Cataline* libel by the statements of all the parties connected with it. Then he proceeded to "unmask" his defamers. He charges this plaintiff with getting up that *Cataline* slander, and with having assailed him at Washington and elsewhere. Then comes the present alleged libel; it must be taken in connection with the rest. There was no charge of getting up contracts corruptly; but, "this man who brings these charges against me has made more money out of secret partnerships than any fifty sharpers, Jew or Gentile;" not "sharper" in the vulgar sense, but in the primary meaning, according to Webster, viz: "A shrewd man in making bargains." The secondary meaning was: "Cheating in bargains, or in gaming." The statement in regard to the Mariposa affair was not a libel, unless it was contained in its final words, that "there were other exactions and extortions during the negotiation that would make Jews blush." In other words, General Fremont had to submit to the loss of large slices of his property before the matter was brought to a successful conclusion. The article then turns upon the *Tribune*, and closes with an avowal on Mr. Weed's part of his disinterested support of the Government, and the causes of his hostility and opposition to the radical wing of the party. The second article was headed "The *Evening Post*, Messrs. Opdyke, Field, Greeley," &c., &c. It alludes to Mr. Opdyke's appeal to the law, refers to the answer in the McNeil suit, and then speaks of what may be called the Gibbs' swindle by way of parenthesis. Then it says that Mr. Opdyke may enlarge the field of his inquiry by embracing the alleged sale of the office of Surveyor for $10,000. Of course Opdyke had no office to dispose of, and it was his influence that was referred to. Then, as a sort of appendage, shoddy blankets are mentioned rejected in New York, but worked in subsequently at Philadelphia. Now, strange to say, not a single witness had been examined as to what shoddy means. Undoubtedly it means inferior blankets, and you have the evidence of the plaintiff's

trying, after one rejection, to put them in. Thus the garments made of inferior cloth were finally thrown into the consumption of the army. There was no imputation that the plaintiff corrupted any of the officers of the Government. The jury were to put no violent construction upon the language, but take it in its natural force of the words. The article then replies to the *Evening Post* about the navy agency, and to Mr. Field's response in the newspapers to the *Tribune*, and again to the *Evening Post's* sneer about Mr. Weed's representing our public interests abroad. Then, with modesty and truthfulness, Mr, Weed disclaims any special fitness for that or any other post, and states his constant refusal to accept high places. All these alleged libels are responsive to attacks in which Opdyke had joined, and they are limited to statements of fact in temperate language, in strong contrast to the expressions "burglar," and "fellow," and "disreputable," that had been heaped upon him by the confederates in this combined attack. Now, the jury, in construing these libels, were to regard them as a part of an animated newspaper controversy, in which recriminations were involved on both sides. During the recent political campaign men were denounced on one side as traitors, and on the other as miscegenators. A bar-room controversy must be regarded in a different light from an obtrusion into a gentleman's parlor by vehement aspersion. Now, in regard to the proof, counsel might pass over, as already sufficiently discussed, the Mariposa affair, and leave to the jury whether the $2,400,000, the $700,000, and the $500,000 that was taken from General Fremont, had not been fully shown, and whether those were not pretty large slices out of his estate, and enough to satisfy the exaction and extortions of anybody. The estate had already produced $3,000,000 in gold, and was supporting a numerous population. The embarrassment grew out of the inability of Fremont to wield it under its debts and the exhausting rate of interest. Owning five-eighths of the property, three-eighths being owned by lawyers in California, he is ready to give one-quarter of the whole, or two-fifths of all he owns, to Messrs. Ketchum, Opdyke, and Stevens, to secure the rest. Out of 62,000 shares he is to have at least 37,000. His proposition to Stevens is that Stevens should have that 25,000 shares to deal with. When Stevens comes to Ketchum and Opdyke they tell him they want that 25,000 shares themselves, so they send him back to get out of Fremont's 37,000 something more. Here begins the departure from General Fremont's munificent proposition. Stevens say to Fremont: These people are going to take the whole 25,000, so you must give me enough to pay the lawyer's fees, &c. Finally, Fremont agrees to give him 7,000 shares more. Now, it is claimed as a sufficient answer in regard to Mr. Field's fee, that it was not exacted out of Fremont, but out of Steveus' 7,000 shares. But it was necessary to include the 2,000 in the 7,000 shares. I find no fault with Mr. Field's fees, but I do find fault with his saying that it was not worked with any exaction or increased extortion upon General Fremont. Now we have got to Fremont's giving up 32,000 out of 62,000—more than half his property. They say to him, "You have got 35,000 left; you must put 25,000 into our hands to secure our control." That made 57,000 shares in their hands, leaving Fremont 5,000. One would suppose that all this involved a considerable amount of concession to the necessities of his situation, and his eagerness for settlement. I agree that it was good advice on the part of his friends that he should get his property back. Why didn't he get it back, except that a new occasion was made for taking more shares out of him? They said, "We will give you back 20,000 shares (why not 25,000?) but only on condition that you will sell us 5,000 at $25 a share." And yet it was selling for $55. So they succeed in getting him to part with 500 additional shares, for which they pay him only half what it is worth. Now Mr. Field's fee is none of my business, but yet it must be a subject of comment publicly. We don't object to the amount, but we do object to his not admitting it to be a large fee. [Laughter.] We never had any such fees, and never expect to have. The difficulty with all this matter is, that $200,000 is not anything, $2,500,000 is not anything, and $700,000 is not anything. If separated they are not anything. Then any child knows that when added together, they are not anything. So we have this owner of 62,500 shares coming out with something like 20,000. It is nothing; he is lucky to get so much. He has got these men's money in his pocket—money that they have left him, and which they ought to have had; and now that he is clear of the concern, he is asked whether they took anything more than they required, and he says he thinks they did not. [Laughter.] Well, I believe they didn't take anything more than they asked for, and I don't think they took anything less. Is a sheep any the less fleeced by the clipping because before its shearers it is dumb? [Laughter.] That is the whole of this story. It is for the jury to say whether there was not a little exaction in it. In examining Fremont, I asked him who paid him for the 500 shares. He said Mr. Hoey. I inquired, "Didn't Opdyke bear a part of it?" This was objected to. I supposed there might have been 3 checks, but it turned out that both the checks were Hoey's. So we failed then to connect Opdyke with the transaction. Then we sent for Hoey into the enemy's camp. We put him on the stand and asked him, "Did you pay for that stock?" "Yes." "With your own checks?" "Yes." "Who contributed to that payment?" Here my friend interrupted and said it was due to the

administration of justice to protect the witness against this inquiry into his private affairs. But the Court said he might answer, and the witness said one-third was paid by Ketchum, one-third by Opdyke, and one-third by himself." That was a probing of his private affairs that alarmed my friend, who knew what his answer was to be. You don't need to eat a whole loaf to find out that it is sour, nor to take out all the spots or injured portions of cloth to ascertain whether it is shoddy. Now we come to the contracts. We are not talking about Mr. Stewart's having contracts. He is not an eminent public character, he has not gone into public service, he is not a seeker after nominations, or a candidate for public offices. He is a plain dry-goods merchant. But here is a patriot, a statesman, an inveigler against corruptions and charters of Catalines, who, in 1863, said he had no connection, direct or indirect, with contracts or business with the Government, and that any supposition to the contrary was pure imagination. This man goes to work to find fault with Mr. Weed for having at an early stage of the war, had some connection with chartering a steamboat. The question is whether, for personal gain and advantage, Opdyke has large dealings with the Government. There is only one way for a tolerably honest and honorable man, and that he is sure that every contract with the Government is in his own name; so proposed, so understood, so known to his political friends and opponents. Mr. Opdyke, as Mayor of the city, divided his conscience between the acquisition of private gain and the concealment that would injure his public reputation and influence. When a man undertakes to serve God and the devil, he must expect to be criticised for it. When a man thanks God that he is not like these other republicans and sinners, and is exposed, people will have their judgment about him. He must choose whether he will go back to his counter and increase his fortunes, or forswear sack and live cleanly. Now, what do we show? Enormous transactions. In twenty months, from September, 1861, to May, 1863, a long list of contracts in the name of a single man, Carhart, to the amount of five millions of dollars, out of which Mr. Opdyke's firm makes $172,000. But to this we have the same answer, "it is nothing." There is the same morbid, arrogant, offensive disregard of all our common-place, every-day notions of honest gains; of our old-fashioned rules and requisitions against public men; our old-fashioned ideas of moderate and sober accumulations of fortune. In answer to the statement that these parties did not make large fortunes out of General Fremont, but out of Mariposa stock, it came to this—that if they did not make it out of General Fremont, they made it out of the public. What was there in this view of Mr. Opdyke's conduct to be approved, or to enhance damages for exposing him, in the avowal that ten millions was put out as a mine, a springe, a net to catch unwary customers with? And then all the purchasers to sell out and retire, and "Mariposa" stand at 15 instead of 75—and that its true value. Then we come to the Surveyorship. That is "a short horse and soon curried." There are only four persons who knew anything about it—Andrews, Opdyke, McNiel and Williamson. It had become a matter of rumor that there was a bargain of this kind; that Opdyke was to give his influence to Andrews to secure the Surveyorship, in return for which Andrews was to use his place to raise $10,000 for Mr. Opdyke's election. Every one knew that Mr. Opdyke had received the $10,000 from the Custom-house; every one knew that no assessment had previously been made for a Mayoralty election; and people wondered how Opdyke smote that rock, and this stream of money rushed out. Now, the two disinterested witnesses, McNeil and Williamson, confirmed each other as to the whole matter of this bargain. Was it to be expected that the parties to this arrangement, when they appeared on the stand, would confess what they had done, especially when one of these was, as Mr. Opdyke had very truly remarked, a "practical politician," and a lawyer to boot.

Counsel reviewed the testimony of Andrews to show that the circumstances of his interviews with McNeil and Williamson, as elicited on cross-examination, fully confirmed the testimony of those witnesses, and could not be reconciled on any other theory than this bargain with Opdyke. The whole arrangement was as plain as anything could be, and not to be shunned in the absence of a written contract. The cue of these political friends was: "You boost me into Surveyorship and I will pull you into the Mayoralty. And the difficulty with Mr. Opdyke has been, that until these things were disclosed and commented upon in broad, trenchent light, the true character of the transaction, to wit: a sale of his influence to help himself to office, did not occur to him. Oh! he says, it was done for the public good—to get a bad Mayor out and put a good Mayor in! Well, the interest which the city took in the matter was shown by a contribution of $2,500, while the candidate, as he says, advanced $20,000, only a portion of which he succeeded in getting back by this levy on Custom-House officers. There are men quite willing to bear their share of party contributions for public purposes, without a personal object. That is a public use of private money, honorable, and if properly expended in conducting our government by the franchise, beneficial. I have known men quite willing to contribute to the election of others, who would cut off their right hands before they would contribute one dollar of their own money in an election in which

they were to have a suffrage. You can understand that distinction? But it was too nice a distinction for Mayor Opdyke to appreciate. Next we come to the government contract. Mr. Opdyke, after becoming Mayor of the city, entered into a gun contract, which perhaps was unwise and unprofitable. The factory, in which he had the principal, almost the whole interest, was destroyed by rioters, and undoubtedly he was entitled to indemnity from the city. But what, under these circumstances, should an honorable man, determined to keep his name free from reproach or imputation, have done? It was no longer a question whether he should conceal his connection with the United States Government. It was now turned into a claim against the city of New York. He should have said, "It will not do for me, the Mayor of the city, to go on in this nominal way—to have my interest appear in an obscure or doubtful manner, or another name. If I am going to recover from the city of New York--I, being Mayor, will do it in my own name, so that there may be no misconstruction, and that my fellow-citizens will see it is my claim." But what have we? Mayor Opdyke, instead of presenting the claim in his own name, for the whole amount, treating it as his own, according to his own evidence, only spoke of his interest in it on one occasion; and then to Mr. Purdy, a Supervisor, urging that it was a large sum of money to lie out of, and if it could be urged forward he would feel gratified. The condemnation, as taken from his own lips, was complete. He concealed, he suppressed, he left in doubt the fact of his paramount interest, and left it to be supposed that Farlee was the party in interest. In the newspaper accounts of the day, in the record of the evidence, there is not anything to show that Mayor Opdyke ever had a claim or interest in a claim against the city of New York. He appears before the committee, speaking of his interest, as if it were an indeterminate one; leaving the inference that Farlee, his son-in-law, was the owner of the claim; and then he says to them, "I have told Farlee to be very careful and accurate; I do not know anything about the details." Although here he acknowledges that, as to the only question in dispute, he knew all about the principle of including profits, and disguising the form of it. Yet this was not concealing, suppressing, and sidling along the claim, under his high character as Mayor! He has told us his own story and given us his own measure of the dignity and propriety due to his character. I never saw a witness of greater courage or better judgment. He takes the responsibility up to the very verge of safety in regard to those matters where there is no counter evidence. On the gun claim, everything being proved, he accepts it, and puts it upon the ground that it was all right and proper. Now the question was not whether the claim against the city were a proper one, merely —but the manipulation and way of presenting it. Suppose for a moment that it was right to include profits, as well as capital advanced,—why was not that claim brought squarely and fairly before the committee? Why conceal the question of profits under the cloak of charging for the guns at Government prices, less the cost of completing them? Mr. Blunt, than whom no man knew more about guns, was deceived by this acute means of getting at profits and patentee fees on guns that were never finished. Would it not have been more fair and honorable to state it to the committee exactly as it would be stated before a jury, raising the question whether profits should or should not be allowed? Then Mr. Blunt, who says he dismissed the claims of poor men, who claimed for prospective profits in the shape of labor, in less time than it took to sell it, might have known what he was doing, and dismissed this claim, or said: "Mr. Opdyke, we will allow your prospective profits on these guns—take your check for $199,000." But this was not a proper or allowable basis on which to make a claim against the city. It was made up on the principle of having dollar for dollar on an investment that (as Mr. Blunt stated) sank 90 per cent. of capital, and then getting full profits that would have been made had the guns been completed. As well might the druggist who was burned out, make up his claim on the basis of charging for what his pills would have brought when made up and sold, deducting the expense of converting his drugs into that shape. As well might the shoemaker, who had a large number of skins on hand, and who had a large prospective custom, charge for what the leather would have brought when made up into shoes and boots, and then deduct the cost of labor.

The remarks of Mr. Evarts were brought somewhat abruptly to a close, by Mr. Henry Harris, a juror, rising and stating to the Court that he hoped the law was not going to make him break his religion as a Jew, by requiring him to sit any later.

Judge Mason said he was not aware of anything in the Divine or human law that made the Sabbath commence at four o'clock.

Mr. Harris repeated, somewhat excitedly, that he was a Jew—that he had always kept his Sabbath, and he would not break it for any law; that he would leave, whether the Court gave him permission or not.

Judge Mason said that while he had every respect for the religious opinions of the members of the Jewish persuasion, and had given up sessions on Saturday to accommodate them, yet this trial had been so often broken in upon, and so much prolonged, and as there was nothing in the Mosaic law or the statutes fixing this hour, he should insist upon the juror taking his place until the adjournment. If he left without permission of the Court, he would be compelled to fine him, and commit him to the Tombs.

MR. EMOTT suggested that the juror did not mean disrespect to the Court, but that the Jewish Sabbath commenced at sundown, and it was now so near that time, they might, perhaps, as well adjourn.

Adjourned to 10 o'clock on Monday.

EIGHTEENTH DAY.

MONDAY, JANUARY 9TH, 1865.

ARGUMENT OF WILLIAM M. EVARTS FOR DEFENDANT (CONCLUDED).

At the opening of the Court, this morning, Mr. Evarts, before resuming his consideration of the topics which he was examining at the adjournment on Friday, made some suggestions as to the legal rule governing the claims of parties against the city for property destroyed by rioters. The claim of the owners of the armory, destroyed on 13th of July, 1863, against the city of New York, was based on the statute of 1855; and the measure of such claim is the actual value of the specific property destroyed at the time of its destruction, and in its mere quality as property, without any allowance for use and enjoyment, or for gains expected or accruing. The relation of the county is that of an insurer or indemnator. (2d Phillips, p. 56, citing Laurent *vs.* Chatham Ins. Co., 1 Hall, 41.) Addressing the jury, Mr. Evarts resumed his consideration of the "Gun Claim" against the city, and passed to the machinery and tools. There were no difficulties in presenting a complete account of the tools and machinery, the material and the articles in an unfinished state; for these elements had to be considered in making up the claim in its present shape. The proper way was to set down the schedule of machinery and tools, and giving its value as it stood at the time of its destruction. Setting down the articles at their value, they would then come to the portion of the carbines which had a fixed price, then the labor expended, and thus the claim would have been made distinct and clear, beyond the material and labor, of over $20,000 for patentee's fees on arms that had never been completed, and also the profits expected on future construction of the guns. But how does the claim for machinery and tools appear to have been made? The principle and result, as exhibited in the schedules, was not to give *values*, but dollar for dollar, all that had been expended by the capitalists and speculators on the subject contained in the schedules. In the statement of the claim before the Board of Supervisors there was no suggestion that the cost of 1,050 guns delivered to the Government was not included. An opportunity of explanation was offered to Mr. Farlee and Mr. Opdyke, and they failed to give it. All the expenditures were considered at the cost of making the 6,000 guns, and in that view there was an absolute suppression and exaggeration of the claim by what appeared in the general expenditures and outlay as attributable to the 1,050 carbines being carried to swell the cost of the 6,000. Suppose certain machines had been sold, would it not have been dishonest not to have deducted the product of their secondary sale? The $185,000 should have had a reduction by the $15,000 received from the Government, but which being balanced in the cash-book does not appear as a reduction. Counsel adverted to the attempted impeachment of Mr. Stover. Of course it would not have been attempted had his testimony been unimportant. But the witnesses who were brought to impeach him were not much acquainted with him, and the attempted impeachment was a failure. Mr. Gibbs said that in the claim as presented to the Board of Supervisors there was a large swindle. Was there not an artifice in the presentation of that claim? It was a deliberate artifice on the confession of the plaintiff. All the sums put in were put in as cost and not profit. There was not a.lisp of the money got from the United States Government, nor of the portion that was to go to the patentees, nor of the profit to the owners. And when the claim was paid the patentee was kept out of his portion on the principle of "equity." The testimony before the Board of Supervisors was taken down, read over to the witnesses, and by them signed, and now the plaintiff wanted you to read it all backward, with this and that interpolated. Mr. Weed based his allegations upon the testimony as it was rendered, and for so doing he was held for accountability at this tribunal. The question was, had injustice been done by the defendant to the plaintiff, by the narratives which appeared in the public prints? The evidence showed that Mr. Weed was the assailed party, and that he undertook to unmask his assailants, among whom was the plaintiff. And from testimony drawn from the friends, employes and dependents of Mr. Opdyke, the facts upon which the charges rested, had been abundantly shown. The plaintiff had overlooked the fact of his public relations. He had put himself on the level of Farlee, McNeil and Jones in the gun contract, and treated himself as under no obligation of strict official duty, of honor, of dignity, of public spirit, of public character, toward this community. So, likewise, in regard to the Mariposa matter; Mr. Opdyke had treated himself as a private

individual, and not in his assumed position of devotion to the public interests and the public good. So, too, in regard to the Surveyorship; he put himself on the level of the common plotters to secure office by means of money, political management and strategy. He never had been a subject of comment by the defendant, except in the light of his public relations, and of his ostentatious and paraded claim that he had no connection with these kinds of pursuits since he became a public man. And what was his justification? That he was not a thief, a robber, a forger, an escaped felon? If a man displays himself for admiration, he must run the risk of admiration. If he is afraid of the glare of the footlights, let him shoot the pit. Diogenes sought for an honest man with a lantern. We, in our joy at the discovery, have placed two lanterns at the doors of our Mayors, and Fernando Wood and George Opdyke are the latest illustrations of our success. [Laughter.] They come, one after the other, from opposite parties, so that we can feel no disappointment of party feeling. We made them, and we must stand by them and share their fate. How much came from placing rich men in office? Principle, character, moderation, self-control, are the test whether a man be rich or poor. Many a poor man has remained poor because he has been shifting, vascillating, and either actually dishonest, or so near it, that he never was trusted. These evil habits are quite as likely to grow upon what they feed upon as to become eager from abstinence. It was out of a crowded harem that King David desired Uriah's wife. This case is already decided. The evidence has been impartially displayed by the press and promulgated all over the land. The question is not so much what the evidence or conclusion is, but whether you and I and all of us have virtue enough of our own to put a true standard of measurement upon this transaction. We have a maxim in our law, that when the guilty escapes, the tribunal that tries him is convicted. So it will be with us to-day. It is the measure of our judgment that is asked for. You have that issue in your hands. You have the keeping of the public fame, public character and public safety. Now if you like this kind of public men, or public conduct, and think that evil has been done to this community by the comments and denunciation of the defendant, clothe the plaintiff, as he asks you, in the purple and fine linen of your applauding judgment, put the golden chain of your favorable verdict about his neck, carry him from this court-room on your Ajax shoulders, blow your sycophantic trumpets for him, and proclaim, until it shall ring through the land, as my friends say, "Thus shall it be done to the man that the people delight to honor."

Sound him victorious!
Long to reign over us,
Opdyke the glorious! [Laughter.]

Or rather, excuse me for a wild imagination as to a verdict that could be looked for only from a jury empanneled in a mad house. All know that the lapsing virtues and sinking fortunes of this community rest in your hands. Know and teach that the freedom of the press is the death of sham patriotism and the grave of public corruption, and that there is nothing to be looked for in a verdict of a jury that shall withdraw from this death its sting, and rob this grave of its victory. [Applause.]

THE COURT—We must have no more of this in the court-room; it is not the place for plaudits.

ARGUMENT OF D. D. FIELD, ESQ.

MR. FIELD addressed the Court and Jury for the plaintiff:

This trial has lasted so long, it is so important to the parties, it has excited so much interest out of doors, and, more than all, it is of such consequence in its relation to the administration of justice, that I shall not conceal my solicitude for the result. I have no doubt whatever that the plaintiff is altogether blameless, in word and deed, in respect to every transaction brought before you, properly or improperly, in this long and discursive trial. I have as little doubt that the defendant is a wanton and malignant defamer, who has assailed the plaintiff for being in the way of his own evil deeds and evil purposes, but I am to learn by your verdict what vigor yet remains in the law, and how far a libeler can be restrained and punished. Your office, gentlemen, is the greatest that can be placed in human hands. An English historian has written that the last machinery of the English Government ended at last in putting twelve men in the jury box to decide upon their oaths. This is as true of America as of England. Even this Titanic conflict which shakes this continent from sea to sea, had for its purpose and end the execution of the laws. The purity and dignity of the tribunals, the learning of the judges, the wisdom and firmness of juries, are the aim as they are the proof of our civilization. If any extraneous influences were permitted to enter the courts of justice, any pressure from without or any claim within, it matters little what may be the form of government. Here we are to hear nothing and know nothing but the law and the testimony. The duty of the jury was never better told than in that ancient formula of

the law, with which they were addressed when they were empanneled: "Good men and true, stand together, and hearken to the evidence." You are gathered together to perform a great public duty, never, probably, to be assembled again. The act which you are to perform will live in its effect upon the public, will live in the memories of men, not only long after you shall have separated, but long after you have all been gathered to your fathers. The libels for which this action is brought are two in number—one published in the Albany *Evening Journal* on the 18th of June, 1863, and the other in the same paper on the 25th of the same month. [Counsel read the libels.] To the complaint for these successive libels, put forth with great deliberation, under the defendant's signature, in a journal of large circulation and influence, the defendant makes in his written answer three defenses, or what he claims to be defenses—first, that the statements are true; second, that he was provoked to make them; and third, that he made them upon due investigation. Of these three defenses, set forth with all gravity, there is not a particle of evidence as to the two last. The defendant was not able to produce any legal evidence of provocation, and he did not venture even to offer himself as a witness to prove that he made any investigation or inquiry to ascertain the truth of his charges before he made them. The only questions that remain, therefore, are the truth of the charges, and if they are untrue, what damages the defendant shall suffer for having made them. Let us, then, take them up and compare them with the proof. They may be divided into four classes: 1. The alleged misconduct in respect to the claim against the county of New York for the damages caused by the rioters in the destruction of the armory. 2. The alleged misconduct in respect to the appointment of Mr. Andrews to the office of Surveyor. 3. The alleged exaction and extortion from General Fremont. 4. The alleged frauds on sales of army clothing to the Government. We will begin with the claim for damages caused by the destruction of the armory.

It would not be easy to crowd into the same number of words a greater number of falsehoods than are contained in the part of the libel relating to the armory. Let us read it again and compare it with the proof. 1. Weed says that "Mayor Opdyke was by virtue of his office a member of the committee before which this claim was allowed." This is untrue, every word of it. The Mayor was not by virtue of his office a member of the Board of Supervisors, or of any of its committees; he was not made such by appointment; he was not a member at all. 2. Weed says "that Opdyke disclaimed any interest in the gun claim." This is false. Mr. Opdyke never, at any time, or under any circumstances, disclaimed an interest in it; on the contrary, he proclaimed it on all proper occasions. The armory was called Opdyke's armory for months before the riots; it was designated as his in the account of its destruction given by the newspapers the day after; the nature of the claim and his interest in it was published in the Evening Post by authority of Mr. Opdyke himself; the day the claim was presented, Mr. Purdy, one of the Supervisors, was informed of it, while the claim was pending before the committee, and when it was called up, Mr. Opdyke being invited to attend, came into the room and excused himself from remaining by informing the whole committee there assembled that, having an interest in the claim, he could not with propriety remain. 3. Weed says that "Opdyke sat on the committee investigating the claims of his son-in-law." Every word of this is false. 4. Weed says that "Mr. Opdyke refused to divide profits fairly, and Mr. McNeil, member of the present Legislature, commenced a suit against George Opdyke for a sixth part of the $190,000." Here are three falsehoods in one sentence. Mr. Opdyke did not refuse to divide profits fairly—he offered all the profits. McNeil, member of the Legislature, did not commence a suit. Mrs. McNeil commenced one. It was not for a sixth part of $190,000, but for about $19,000. I will not stop to observe, as an evidence of the recklessness with which Weed wrote this libel, that though the documents showed the amount received from the city to be $199,700, he cared so little for accuracy as to put it at $190,000. 5. Weed says that "in presenting this claim to the Supervisors, Opdyke declared that he had no pecuniary interest in it." This is every word of it false. Mr. Opdyke never made any such declaration, and, indeed, never presented the claim to the Supervisors. 6. Weed says that, in answering McNeil's complaint. Mr. Opdyke "avers himself the owner of the share claimed by the plaintiff." Mr. Opdyke did nothing of the kind. A copy of the answer seems to have been given to Weed, and he therefore knew better. 7. Weed says, "this, therefore, is Mayor Opdyke's position, to qualify himself to act impartially and honestly for the taxpayers of New York, on a committee he disclaims being interested in the gun claim." This is false, like the rest. Mr. Opdyke did not qualify himself, nor attempt to qualify himself, to act on the committee; it has already been shown that he did not disclaim being interested in the claim. 8. Weed says, that before the claim was paid, Mr. Opdyke had repudiated "his ownership of the largest share." This, too, is utterly false. Driven by these proofs of his falsehoods the defendant retreats to the claim itself, cries out, well, if I did make all these false accusations, nevertheless the claim was unjust. This would not protect him if it were true. A defendant cannot justify eight false accusations by showing that the ninth

is true. We will, however, pursue him into this retreat, and see if it will shelter him. What he says in the libels about the claim itself, is contained in these two sentences, one in the first libel and the other in the second: "It is alleged that $25,000 received from the Government the contract was forgotten in making up the claim against the city;" and "Mr. Gibbs, the carbine patentee, says that, in the claim submitted to the Supervisors, on which $196,000 was paid, there is a large swindle." You may observe, by the way, that he has got the amount a little larger now, though he does not even yet condescend to state it correctly. At first he gave it as $190,000; a week after he gave it as $196,000. Perhaps in the next libel, if he venture upon one, he will get up to $199,700. Here are two sentences, one of which puts the defamation in this form: "It is alleged that $25,000 was forgotten," and the other in this: "Gibbs says there is a large swindle." These charges are not to be justified by proving that somebody alleges one thing and Gibbs says another. The law does not allow a man to libel another in this cowardly manner. The truth of the thing alleged must be proved. Thus regarding these charges, I will consider them together. They both charge a fraud. The forgetfulness mentioned in the first sentence is intentional forgetfulness. The defendant is obliged, therefore, to prove that the claim is illegal, unjust, and fraudulent. A "swindle" is a gross cheat, accomplished by artifice. The defendant must convince you that the claim is not only illegal and unjust, but that the plaintiff knew that it was so, and procured its allowance by gross artifice. I might content myself with reminding you that every person interested in the claim; every person concerned in getting it up; every person voting upon it, supposed it was legal and just. Jones, one of the defendant's principal witnesses, suggested it, and declared on oath that he thus considered it, and does still consider it legal and just, and made upon the correct theory. Keene, another of the defendant's witnesses, gives the same opinion, and says he would swear to it till he was blind. The book-keeper who made it up swears the same thing. Mr. Farlee and Mr. Opdyke both affirm upon oath the same opinion. Would it not, therefore, be unjust and cruel to fix upon the plaintiff the stigma of having designed the perpetration of fraud, even if the claim should be pronounced untenable? But I will not stop here. I will accept the challenge of the defendant's counsel, to try this claim as if it were a suit against the city to recover it, and I undertake to show, not only that the claim was all of it recoverable, but that it was less by a large amount than might have been justly demanded and recovered. To this point, divested of all other circumstances, I now invite your attention. The purchase from Marston was made on the 1st day of December, 1862; the property was appraised by two appraisers, one of whom was Mr. Colby, a member of the well-known firm of R. M. Hoe & Co. It amounted to $92,135.02, which was about $10,000 less than it had cost Mr. Marston; Mr. Farlee paid $91,154.06 for the whole. Of this property there remained at the time of the fire, $37,093.31 in value, estimating it at the same price which had been paid to Mr. Marston. Between the 1st of December, 1862, and the 13th of July, 1863, the time when the property was destroyed, there had been added machinery, tools, fixtures, &c., purchased or manufactured, amounting to $30,836.38. These two sums made $97,929.69, which are put down as the total value of the property exclusive of the carbines manufactured and in process of manufacture. The number of manufactured carbines was 500, and these put at the price for which they were sold to the government, that is, $24.70, amounted to $12,350. There were 5,500 carbines in the process of manufacture at its different stages, some of them, the most advanced with all their parts complete and ready to put together, and others, the least advanced, all forged and inspected but not machined. The principle upon which the claim for these unfinished carbines was made out, was to charge them at the price which the government had contracted to pay for them, less what it would cost to finish them. Thus estimated, they amounted to $98,215. The claim, therefore, consisted of these four elements:

The machinery and tools bought of Marston		$67,093 31
The machinery and tools subsequently required		30,836 38
The 500 finished carbines		12,350 00
The 5,500 unfinished carbines		98,215 00
Total		$208,494 69
Deducting proceeds of the sale of damaged machinery	$2,214 98	
And adding 596 bullet-moulds	783 00	
		1,431 98
Left the total claim at		$207,062 71
The Supervisors reduced the amount by taking off		7,362 71
And awarded		$199,700 00

This claim has been attacked in two respects, first, in respect to the value of the tools and machinery, and, second, in respect to the value of the unfinished carbines.

It has not been alleged that there was any error in the number and kind of the articles charged as destroyed; but in the values affixed to them. Here let it be observed, at the outset, that the libel assailed only the claims for the unfinished carbines. The defendant's article spoke of the claim for "damages sustained in the destruction of guns in the process of manufacture." He could, therefore, have had no idea at that time, that there was anything wrong in the residue of the claim. And even down to the trial, neither he nor his counsel appears to have had any such ideas. The junior counsel, in his opening that monstrous tissue of aggravated libel, took occasion to say, expressly, that the transaction between Mr. Opdyke and Mr. Marston was "an honest, fair, and just one." It seems to have been reserved to the brilliant genius of Stover to discover and convince Weed and his counsel that the transaction was dishonest, unfair, and unjust. But let us examine it for ourselves, and in detail. First as to the tools: Mr. Colby valued according to his excellent judgment all the tools purchased of Marston, and he testifies to the correctness of the value put upon them. He also testifies that the machinery was valued at its cost, the bills being exhibited to the appraisers, and the different articles verified as on hand, and in good order. His testimony in this respect, is corroborated by that of Marston. To disprove it, the defendant brought forward Stover, whose testimony on this point failed altogether. He declared that eight different articles of the machinery were bought by Marston of him at prices less than those charged, the difference on the whole being $228. The bills, however, were produced the next day, and they showed that Stover's testimony was utterly false. He notified further that certain other articles, which he did not sell to Marston, were overcharged. He could not know what they were sold for, since he did not sell, but his estimation of the prices as proved to be false. His estimate covered only eleven items out of several hundred, and seven of the eleven, if his testimony were reliable, would make only a difference of $558. This should be enough to put the value of the things in the stocking-room beyond dispute. Another of the four items is for the main shafting, including pulleys and hangers, which is charged at $1,681 16, which Stover says should have been charged at $640. But it appears that he himself sold less than half of it, and Mr. Marston, Mr. Colby and Mr. Farlee, all testify that the whole cost $1,681 16. The third item is for putting up and adjusting counter-shaft of sixty-five machines, which is charged at $1,495, by which Stover says should have been charged at $8 a machine, making, according to his computation $450. His estimate is as false as his arithmetic according to the testimony of Marston, Colby and Farlee. There can therefore, be no doubt that all the tools and machinery specified in the claim, as having been purchased by Marston, were in the building when it was destroyed, and that Mr. Farlee paid for them, not only all that is charged but much more. We thus establish the justice of the claim to the extent of the $67,093 31. Let us now go to the next class, that is, the tools and machinery purchased and manufactured from December 1, 1862, to July 13, 1863. It will be remembered that all the books and papers of the establishment, except the cash-book and a ledger since found, were burned in the fire. Mr. Farlee, the proprietor. Mr. Keene, the Superintendent, and Mr. Paret, the bookkeeper, were therefore obliged to make out the list, partly from memory and partly from the charges in the cash-book. They did so. Every one of them said he did it concientiously, with all the accuracy and minuteness that was practicable, and at the cost appearing upon the cash-book. Stover, however, obtrudes himself also into this schedule. He says that the charge for 29 tool hands is too large; that instead of 29, there ought only to have been 2. He of course did not know how many there were in the establishment; he infers or guesses that two were enough. On the other hand Mr. Keene, Mr. Paret, and Mr. Farlee, all testify that they made up the charge from their own knowledge; they called the tool hands by name and counted them, and they were all fully employed. It is suggested, however, rather than attempted to be proved, that these hands were employed in repairing as well as making tools, and that the cost of repairs ought not to enter into the price of the thing repaired. To answer is two-fold, first, that there were no repairs but ordinary ones, and those of very small account; and second, that the cost of repairing, from ordinary wear and tear, does enter into the cost and value of a manufacturing establishment. The amount of ordinary breakage in many kinds of business, that of dealers in crockery, for instance, enters into the price of the articles sold. Without estimating that, and putting it upon the unbroken articles, the dealer would soon find himself in a losing business. It thus appears that the machinery purchased of Marston, and the machinery and tools afterward purchased or manufactured were put down at their actual cost, and that the tools purchased of Marston were put down at their actual value as estimated by the appraisers, of whom Mr. Colby was one. The attacks made upon these two schedules, therefore, fail entirely. Their amounts are $97,929.69. An attempt, however, has been made to show that these tools and machinery ought not to have been charged at their cost, but at a depreciation, because they had been used. They had been in use but a short time. The establishment had been worked only

about five weeks, and had just begun to turn out its full complement of guns—fifty a day. Under these circumstances, every witness who has testified on both sides, affirms that the tools and machinery were better, not worse, for the use thus made of them. Some of the witnesses do indeed say that if scattered and sold to third persons, they would not have brought as much as when new, but that is not the test on its value; what was their pecuniary value to the owner at the time of their destruction, is the true test. They had, in the present instance, increased largely in price, in common with all other gun machinery, for two causes, one, the great demand for guns arising out of the war, and the other the depreciation of the currency. The witnesses generally say the increase had been from 25 to 50 per cent. Taking it at 30, and we have the real value of the tools and machinery which the rioters destroyed, not $97,929.69, but upwards of $127,000. The next charges were for the finished and the unfinished carbines. So far as the finished carbines are concerned, there is no complaint, but there is a great outcry against the charge for those which were unfinished. Why there should be an outcry against it I have never been able to discover, except in the disposition of a libeler to raise a cloud, under cover of which to escape the consequences of his defamation. The carbine in question was a peculiar arm; nobody else had a right to make it; nobody else could make it. The Government had contracted for 10,000 of them, and there was a fair prospect of its taking more; 1,054 had been delivered and paid for, 500 more were finished, ready for delivery, and would have been delivered that day; 5,500 more were unfinished in different stages of the proceeds of manufacture, and would have been completed at the rate of 50 a day, the whole 5,500 in 110 days. As fast as finished and delivered, the Government was to pay for them, the price of the whole 5,500, amounting to $135,850. It would cost $1.97 a gun to finish the first 500, $3.40 the first 1,000, $5.57 the second 1,000, $7.38½ the third 1,000, $9,46 the fourth 1,000, and $10.83 the fifth 1,000; that is to say, it would have cost $37,635 to finish the whole, and on finishing, the proprietor would have been entitled to $135,850. They were therefore nearly three-quarters finished. Under these circumstances the defendant's counsel advances the strange, and as it seems to us, preposterous proposition, that Mr. Farlee was entitled only to the value of the separate parts of these carbines, separately valued, and the different values added together. Thus, for example, they take the five hundred unfinished carbines, all the parts of which were completely formed, and which only required to be brought together, assembled as it is called, to make the complete gun at an expense of $1 97. They say, we should value the barrel by itself, the lock by itself, and so of each of the other sixty parts, and add their values together to get the amount to be claimed. We say, we should take the price of the carbine, as the Government was to pay for it, which was no more, as all the witnesses say, than its fair value, and deduct the cost of bringing the parts together. Is not ours the true mode? No other will compensate the manufacturer; less than this is not an indemnity. If our mode is not the true one, then this result would follow—that while the owner of a complete gun can recover its full value from a trespasser who destroys it, yet if the owner has, perchance, taken it in pieces and laid the parts each by itself, to clean them, and they are all in that state destroyed, he can only recover of the trespasser the aggregate value of the separate parts, separately valued. The principle may be also illustrated by reference to another instrument of war, the iron-clad *Dunderberg*, now lying unfinished in Mr. Webb's shipyard. The rioters sought its destruction. It was, however, saved. If it had been destroyed, what would have been the measure of Mr. Webb's claim against the city? Would it have been the price at which it would sell in its incomplete state? That would be very little, probably not a hundredth part of what it cost. No merchant would have bought it. For purposes of commerce it would not have been worth a dollar. There would have been no market for it. The fair value of the structure is its value to Mr. Webb for purposes of sale to the Government; that is, the Government price, less the cost of finishing it.

The Court here stated that he had been impressed with the force of the counsel's argument, in assuming a certain price for the guns and deducting the expense of finishing them. But the difficulty in his mind was, whether the plaintiff had a right to charge the city the price the Government was to pay, or the actual value of the guns. He had more doubt in regard to that. The Government might fail, or refuse to take the arms, and then they might not bring so much in the market.

Mr. Field said that he had questioned two of the witnesses, at least, whether the Government price was the fair value of the guns, and they said it was.

The Court thought the evidence showed, rather, that the guns had no market value.

Mr. Field referred to the testimony, to show that it was as he stated. Then, turning to the Jury said: If there is a doubt in the mind of the Court, and he asks for authorities on this question, then there was certainly no swindle in presenting the claim on this basis; thus was the claim made up. When it came before the Supervisors, the examining Supervisor directed his attention chiefly to another mode of estimating the value of the unfinished carbines, and that was their actual cost. Though that was not, as we

suppose, the true mode of estimating the value, it so happened that the amount claimed and the actual cost were nearly coincident. Whichever way the calculation was made, the result was the same. The elements of both calculations were stated in the testimony taken by the Supervisors. For the purpose therefore of silencing cavil, and disarming prejudice by reason of any supposed profit of the proprietor, I will now show the financial condition of the establishment. It will thus appear that the carbines actually cost all that was claimed, and more, and that when Mr. Blunt drew his conclusions from the cost, he drew them just as accurately as if he had drawn them from the price calculated by the Government. Here is the profit and loss account, from which you see that I am justified in all I say. The claim of Mr. Farlee thus made up amounted to $207,062.71. Mr. Opdyke did not make it up; he entered into none of its details; he was informed of the principle according to which the unfinished carbines were charged, and approved it; he rejected an item which would have swelled it; the only instructions or advice which he gave, was a caution to Mr. Farlee to put in nothing doubtful, and to err, if at all, in favor of the city, and beyond this he had no part in the making up, presentation, or proof of the claim. It was presented in the name of Mr. Farlee, because he was the legal owner; the property stood in his name; he alone sued for it; he alone could have sued for it; his receipt and release was the one, and the only one, which could protect the city against a second claim. The interest of Mr. Opdyke, however, was well known; the armory had gone by the name of Opdyke's Armory long before the riot; the violence of the mob against it was on that account; its destruction was announced in the newspapers of the next day as the destruction of his property, and when, on the 9th of September, the claim was presented, it was announced in the *Evening Post* of the 10th of September, upon the information of Mr. Opdyke himself, that he was interested in it, and its amount was stated with all the items for the carbines, finished and unfinished, set forth at length. Notwithstanding his large pecuniary interest, Mr. Opdyke refrained from urging it personally upon the Supervisors; he was not a member of the committee, or of the board, and when, upon the occasion of their final action, he was requested to attend before the committee, he came after three successive messages, to their room in the hall, on the floor above the Mayor's office; he stated to them that he was interested in the claim, he could not remain, and only desired them to treat it as they would that of any other. After he left, it was considered and allowed at $199,700. The notion that the $28,000 received from the Government was forgotten or suppressed in making up the other claim is the strangest of all the strange fancies which this cause has engendered. The claim embraced nothing which had been delivered to the Government, and therefore credited nothing which had been, or was to be, received from the Government. Has it ever occurred to my learned friends, that if this claim was improperly allowed, the Supervisors and the Comptroller of the city are equally culpable with the Mayor? They, and especially the Comptroller, are the guardians of the city treasury. The Mayor had merely a suspensive vote. The Supervisors' Committee were only advisory. The Comptroller was bound to examine every claim himself. He did so examine, and in many instances, reduced or refused claims allowed by the Supervisors. The Corporation Counsel was also bound to be vigilant. He was paid for his vigilance. His close relations with the defendant are well known. The defendant was then at open enmity with the Mayor. If there was anything wrong in the claim, why did the Counsel to the Corporation connive at it? The defendant's libel, though a thrust at the plaintiff, is really a stab at the Supervisors, the City Comptroller, and the City Counsel. But there was nothing wrong in the claim, and that is the reason why it was passed. I will here take occasion to say that, in the opinion of my associate and myself, the claim presented was not only a legal and just one, but considerably less than it might have been made. The profits that would have accrued from the remaining carbines which the Government contract called for, from the 2,946 not yet forged, were, as we think, properly chargeable. The defendant has endeavored to prove that the carbines might have been duplicated in the establishment at from $14 to $16 48. Taking the latter as the true cost, and adding the tariff to the patentee, $3 50, the profit on each of the 2,946 would have been $4 72, which would have amounted on the whole to $13,905 12. Mr. Keene testified that there were in the building, materials for 200 to 300 carbines, beyond those charged for. There might, therefore, have been justly added to the..... $207,062 71
30 per cent. advance in price on the tools and machinery..... 29,378 90
Materials for 250 carbines at half price..... 6,175 00
Prospective profits on 2,946 carbines..... 13,905 12

Total..... $256,521 73
Interest from July 13 to October 23, 1863..... 5,087 68

Total..... $261,609 41
Amount actually received..... 199,700 00

Total..... $61,909 41

These, gentlemen, are our views and the views of our client respecting this claim. We are confident that he got, not too much, but too little; that he has not received adequate indemnification for the loss inflicted upon him by the rioters. The city has never complained that too much was paid. It is Weed, an interloper, not one of our citizens, who thrusts himself in between the plaintiff and the city, saying to the Comptroller and Supervisors, "You were faithless guardians of the County Treasury." If the plaintiff's arguments convince any of these gentlemen, let them act upon them—we are ready to accept the challenge. My client authorizes me to say that if the city will reinstate the suit of Mr. Farlee, and go to trial upon its merits, and pay any excess of the money over the amount received, he will stipulate, with sufficient sureties, to return any deficiency. Here is a chance for you, gentlemen. The Corporation Comptroller is the plaintiff's political opponent, the Corporation Counsel is the defendant's particular friend. Persuade them, if you can, to abide by this test; tender them your services to prove their case. Do this, or cease your clamor. I have thus gone step by step over the charges of this libel in respect to the claim for the destruction of the armory, and over everything which the defendant has been able to gather from all quarters, creditable and discreditable, against its accuracy, and everything which the defendant or his counsel have been able to say, or to insinuate against it, and I submit to you, that every statement in the libel is shown to be a gross, malignant falsehood, and that the whole fabric created during these long months to justify it has been scattered in pieces. Having thus disposed of the libel concerning the armory, I come to that concerning the office of Surveyor of the Port of New York. The complaint alleges the meaning of the libel to be "that the plaintiff had corruptly sold the office of the Surveyor of the Port of New York, or had received the sum of $10,000 for or on account of the appointment of some person to the said office," and this allegation not being denied, must be taken to be admitted. If the meaning had not been thus alleged and admitted, it would nevertheless have been apparent. The language and the context clearly indicated that the defendant intended to charge upon the plaintiff the selling of the office for $10,000. Counsel reviewed the testimony of McNeil and Williamson, criticising the three stories told by McNeil, all of which, he stated, were contradictory, and inconsistent with each other. The only interview pretended to have been had with Mr. Opdyke, was one by McNeil, and another by Williamson, each separately. They did not together go to Mr. Opdyke's at any time. McNeil gives three different accounts of his interview; Williamson two different accounts of his. McNeil's word was not worth a straw. His manner was enough to destroy all confidence in his accuracy. He had the craven swagger of a political bully, not the subdued and decorous manner of a witness under oath. His language is a singular mixture of precision in one expression and looseness in all others. Thus, he is almost always careful when speaking of the officer to be appointed, to call him Surveyor of the Port of New York. This is the language of the libel, which he seems to have studied. Yet it is not creditable that two men, speaking of this office, should in all instances add the supplementary and unnecessary words, "Get him, however, out of the port of New York, and he is as loose as possible." "You may have it, Charley, if you think it better." And, "I think I will." Q. If what? A. If things were arranged to his satisfaction, of course. McNeil is convicted of falsehood by Williamson. He is asked if Mr. Opdyke did not make him an offer of settlement before suit was brought. He answers, "No, Sir-ee." Williamson testified that the offer was made to McNeil himself in Williamson's presence. McNeil is also contradicted by both Mr. Opdyke and Mr. Andrews in respect to an interview at Washington. He says he met them there in the winter of 1862, and had a conversation with them about the alleged bargain for the Surveyorship. Both of them testify, not only that there was no such conversation, but that they did not meet him in Washington at all. We may, therefore, leave McNeil and all his stories aside, as not even a makeweight in the scale of evidence. Mr. Williamson's testimony of his interview with Mr. Opdyke is too vague for any reliance to be placed upon it. He went to Mr. Opdyke's office and said something to him. His language is, "I said that I had been to see Andrews about the matter, by his request; that the matter was entirely satisfactory; that I believed Andrews would carry out in good faith what he had proposed." He cannot recollect a single word used in that conversation. Q. What did Mr. Opdyke say to that? A. He made no reply that I recollect now. I don't recollect that he did make any reply; he simply acquiesced in it. Now, to convict Mr. Opdyke of complicity in any bargain, it is necessary to show that he understood Williamson's langnage to relate to such a bargain. Williamson does not testify that he stated the terms of a bargain, or that there was a bargain at all about getting Andrews the office. Truly Mr. Andrews would not want McNeil to "intercede" for him; nor would Mr. Opdyke want Williamson as a witness to Mr. Andrews' promise. Again, Mr. Andrews had already been announced in the papers as the successful candidate. Then Mr. Andrews could have no possible motive to enter into such a bargain. Even if the bargain were made, it was utterly without performance on the part of Mr. Opdyke.

Counsel having disposed of this part of the libel, the Court adjourned to 10 o'clock Tuesday, intimating that the case must positively go to the jury then.

NINETEENTH DAY.

TUESDAY, JANUARY 10TH, 1865.

At the opening of the court, Mr. Emott presented his views to his Honor in reference to the measures of damage against the city for the carbines destroyed—citing authorities to show that the true standard of value was that which was allowed, viz.: the Government price of the carbines, (including profit and patentee's fees,) less the cost necessary to finish them.

The court stated that he did not agree with the counsel for the plaintiff as to the true ground of damages against the city. In this view, however, this question was not very material in the present action. If a man brings a suit and claims a wrong rule of damages, if it does not bear evidence of bad faith, no imputation is to be cast upon him. That will be a question for the jury.

ARGUMENT OF MR. FIELD CONCLUDED.

MR. FIELD resumed:

The libel in relation to General Fremont is a tissue of falsehoods. The point of it is that Mr. Opdyke worked upon General Fremont's political ambition to deprive him of his property. A more wanton, wicked and cruel libel was never published. It is at once base, and baseless. The whole transaction between Mr. Opdyke and General Fremont was simply a matter of business resulting from a negotiation begun by General Fremont, in which he made an offer that was accepted and performed. No political consideration entered into it, or was even suggested or surmised. General Fremont finding his estate embarrassed, and unavailable, offered one-quarter to capitalists to extricate it and him. The debts had been created in defending the title against the Government and in developing the estate. He had never before been able to get any one to agree to take it for less than half. He now offered a quarter to Mr. Stevens, who offered it to Mr. Ketchum, who brought in Mr. Opdyke. This is all of Mr. Opdyke's connection with the matter. He received no more than he was offered. He performed what he promised. The asking of General Fremont to let twenty-five thousand shares remain in Mr. Ketchum's name, in trust for him, was only a proper and usual precaution to keep the stock out of the market for a limited time, and prevent the control of the company from passing into other hands. The counsel has seen fit to allude to the present embarrassments of the company. There was nothing about them in the evidence, and this is not the place to explain them. If he intended thereby an imputation upon the good faith of the capitalists who formed it, an abundant answer is found in the dispatch which appears in the evidence, which was transmitted by the principal bankers of San Francisco eight days before the formation of the company, containing the substance of the report just made by the most eminent mining geologists of California, by which it was estimated that a gross monthly product of the estate might be counted upon of two hundred thousand dollars in gold at a cost of forty thousand, which would give a yearly revenue of $1,920,000 in gold, capable of extinguishing the debt in less than a year, and then giving a yearly dividend of over forty per cent. in our currency. The defendant attempts to fasten upon Mr. Opdyke the charge of making a hard bargain with Gen. Fremont when these twenty-five thousand shares were lossed from the trust and about to be thrown on the market. The plaintiff was not the trustee and had nothing to say about the discharge of the trust. He joined Mr. Hoey in the purchase of five thousand shares. There is no evidence that the same number of shares could have been sold for a larger price than Mr. Hoey gave, or that Mr. Opdyke made anything from the purchase, but whether it was so or not, the purchase was made between parties competent to contract, and neither complains of it. The intrusion of Weed into the company is a piece with his character; he was invited by neither of the parties, and is equally offensive to both of them. It has pleased the defendant and his counsel to drag my name into this controversy. There was for this neither necessity nor excuse. I was not responsible for any act of Mr. Opdyke's, nor was he responsible for any act of mine. I received nothing from him and he nothing from me. A client who wanted, or thought he wanted my advice and assistance, offered me for certain services a certain compensation, amounting in value to one-fiftieth of the estate which was to be extricated from the embarrassments with which it was covered all over, and from which it might or might not ever be disentangled. The offer was accepted, the services performed, the compensation paid, and both parties were then, are now, and have ever since been satisfied. Why Mr. Weed, or Mr. Evarts, or Mr. Pierrepont need concern themselves with it I do not know. One's own business is, in general society, considered enough for one's own attention. My friend Pierrepont need not waste his thoughts upon it, for nobody will ever make him such an offer, and he would not earn so much were he to live a hundred years. My friend Evarts would not accept such an offer, if it were made. He would

tell his client that he over-estimated the value of his services; he could not accept so much for them; he would be happy to do more work for less pay. He would not take a large fee, not he. His honest soul relucts at it, as it relucts at one man helping another to an office, upon any understanding, express or implied, that his friend shall remember him. Now, I propose this compromise with him. If he will make oath that when he went to Washington to procure the appointment of his friend to a certain lucrative office in this city, there was no understanding that he should receive the counsel fees which the office could bestow, I will promise not to cross-examine him. If he will then sit down with me and compare the fees which he has received from the public treasury with those which I have received from my private client, I will promise to make no public inquiry into the amount he has received, and we will both cry quits and be even. But to be serious, this inquiry into the fees which my private clients see fit to give me is sheer impertinence. Weed knows no better. His education, his associations, his habits, his instincts, have taught him no better. My learned brethren, Evarts and Pierrepont, however, know better. They have been educated as gentlemen; they have been trained as lawyers; and, although on one occasion during this trial Mr. Evarts gave it as his opinion, as I understood him, that when a lawyer comes into court he sinks the gentleman in the lawyer—an opinion, by the way, which shocked and amazed me when it was expressed; yet I take leave to remind him and his associates that neither as lawyer nor gentleman has either of them any concern with my private affairs. Now, gentlemen of the jury, before I lay it aside, let me read this part of the libel again. "More than a year ago, Mayor Opdyke and others reminded General Fremont that when a candidate for President in 1856, he was weakened by pecuniary embarrassments." This is false. Mr. Opdyke never reminded Gen. Fremont of any such thing. Again: "That as his friends intend to run him again, it would be well to put his affairs into better shape." This is false. Nothing of the kind was ever said. Again: "These friends formed themselves into a Mariposa Mining Company, &c. But new difficulties arose, which, however, were adjusted by the payment by Gen. Fremont of $2,400,000 in Mariposa stock," &c. This also is false. No new difficulties were adjusted; no new difficulties had arisen. The first act of General Fremont had been, as his first offer was, to convey one-fourth of the estate to Mr. Ketchum, and the company was formed long afterward. The libel is false in its whole scope and meaning. It charges extortion from Gen. Fremont by first working upon his ambition and then leading him into difficulties, all of which you have seen is as false as can be. This is not the place nor the occasion for an eulogy upon Gen. Fremont. The gentlemen may think it befits their case to represent him as a weak and timid man, the easy prey of designing capitalists, and afraid to utter his opinions in this hall. It is well one of the counsel said he had never seen him before; for if he had he would not have been wholly ignorant of his character. Gen. Fremont evidently thinks that bluster is not a proof of strength, and that the quiet demeanor of a gentleman is compatible with the loftiest courage of a soldier. In his checkered life he has passed through many vicissitudes. Rightly surnamed the Pathfinder, he was the first to explore the passes of the mountains of the furthest West. Returning from Europe to fight the battles of his country, he was the first General to beat Stonewall Jackson in fair battle at the East. He sustained the contest for the Mariposa estate with the same courage and tenacity with which he encountered the enemies of his country. He maintained his title and his possession against hostile claimants and lawless intruders, and, after many years of anxiety and labor, has reaped from it an ample fortune. His name will live in the history of his country so long as the country endures. No man will ever cross the plains to our Pacific empire—whether he passes with the long caravan of emigrants seeking a home in the west, or by that future railway which is certain yet to thread the gorges of the mountains—no man will ever look down from the Sierra Nevada upon the golden land of California without thinking of Fremont. I pass now to a new subject, that of army clothing; the libels on this subject are as follows: "This man has made more money by secret partnerships in army cloth blankets, clothing and gun contracts, than any fifty sharpers, Jew or Gentle, in the City of New York." And again, "Mr. Opdyke can, if he pleases, enlarge the field of inquiry, so as to embrace * * * the shoddy blankets that were rejected in New York and subsequently worked in at Philadelphia." The meaning attributed in the complaint is, that Mr. Opdyke "made money unjustly through fraudulent, corrupt or extortionate contracts with the Government, and that he corruptly and fraudulently procured the acceptance of imperfect blankets by some officers of the Government in Philadelphia, after they had been rejected by the Government in New York." This is the real meaning of the expressions, the sense in which the defendant used them, the sense in which he meant them to be understood. His whole articles are bitter and vindictive. He means everything in an unfavorable sense, and intends that it shall be so understood. For these aspersions there is not a particle of justification in the evidence. There were never any blankets sold or received at Philadelphia after having been rejected in New York. The whole charge in that respect is a pure invention. There was never any

contract made with the Government which was not fairly made and fairly executed. Nothing of the kind commonly known as shoddy was ever received by the Government or offered to it. The Spaulding cloth was of substantial material; the only objection to it was the difficulty of coloring some of it; but the spotted parts were left out in the making up, and the garments delivered to the quartermaster and accepted by the inspectors, were good both in material and color. But, says the defendant's counsel with loud voice and great emphasis, here is a public man, Mayor of a city, interested in contracts for the supply of the army. Is that a fault? The army must be supplied. Cannot honest men engage in supplying it? Must Weed and his friends have a monopoly of the business? If that be so, Heaven help the country? When complaint was made to Luther that secular airs were played in the churches, the great reformer replied that the devil must not have all the good music. So we modestly ask, must the devil alone supply the army? Must our brave soldiers be clothed and fed by thieves? No, no, no. The furnishing of supplies to the army and navy on contracts fairly obtained and fairly executed is an honest and patriotic act. Parrott, and Ames, and Ericsson, and Stewart, and Sturges are helpers of their country as truly as he who leads a battalion, or digs in the trench, or mounts the parapet in a storm of fire and leaden hail. The Mayor of a city, however, ought not to do it, say the gentlemen. Why not? If it be a good thing, and patriotic, why should he refrain from it? If he has something which the Government wants, ought he to refuse it, or ought he to resign before he lets the Government have it? Must he give up private business when he takes a public office! Is it not of the vices of our times that so many of those who hold office have no other business, no other means of livelihood? They live on the public. The offices are their patrimony; their trade is politics; their traffic is in public employments. Some of the purest and best of our mayors have thought their public office and their private business quite compatible. Mr. Havemeyer did not abandon his sugar refinery; Mr. Westervelt did not give up his shipyard; Mr. Tieman did not assign over his paint factory. If a successful merchant be chosen Mayor for two years, must his firm be dissolved, or must it pursue a different line of business from what it would have pursued if he had not been elected? But I have said enough on this subject, and I will say no more lest I weary you. Such, gentlemen, are the facts in relation to these charges. The charges themselves are gross; such as no man could rest under without a stain upon his name. What was the plaintiff to do? Should he inflict personal chastisement? That is the first impulse of a wronged man, just as it was the first impulse of my client, when the opening counsel of the defendant charged him with a lie in the Harris letter, to cleave him instantly to the floor. But the law forbade. The judge, whatever he thought of the provocation or the vengeance, would have been obliged to punish it. So, if the plaintiff or his friends had sought the defendant and broken every bone in his body, they would have done to the defendant no wrong, but they would have violated the law and wronged society. A civilized community cannot maintain itself if it allows private vengeance for private wrongs. Personal revenge, was, therefore, not to be thought of. What, then, I repeat, was to be done? Would you have the plaintiff content himself with a reply in the newspapers? That is palpably insufficient. There is a Chinese proverb that a lie will travel round the world while truth is putting on its boots. You cannot follow the libel with a contradiction into all the newspapers in which it is published. Many persons will read one and not see the other. Some will believe one and disbelieve the other. A contradiction is, therefore, insufficient. What then, I repeat again, was the plaintiff to do? He was constrained to take the redress which the law gave him, such as it, was whether it was perfect or imperfect. That was the dictate of the law—our law, your law, the law of the land. He had two courses open to him, one to prefer an indictment, the other to bring a civil action. His first design was to do both. There were reasons, however, which made him finally decide, in the first instance, for the latter. One was, that in a criminal prosecution the defendant could not be a witness, and a clamor might be raised that he wished to shut the defendant's mouth. There are other reasons, which any one acquainted with our political history, and who has seen what has been going on in this court-room, will readily understand. The civil action is undoubtedly an imperfect remedy; but it is the best the law affords. The only reparation which it offers to the plaintiff, the only punishment it threatens to the defendant, is in pecuniary damages. If, after passing upon the truth or falsehood of the charges, the jury could themselves fix the measure of reparation; could require the defendant to publish a recantation, or fasten upon him a stigma that should not be misunderstood, it would be more consonant with the ideas of modern society. But that has not been done. The lawgiver has left no other means of reparation than the amount of damages. The plaintiff seeks your verdict, and a large verdict, because that alone will mark your sense of the injustice which he has suffered. A small verdict will signify that the plaintiff has been wronged, but that it is of little consequence whether he has been wronged or not. It is for that reason, and that alone, that he seeks a verdict which the defendant shall feel. The defendant's counsel tells you it is avarice that prompts this

demand. It is not avarice; but a proper self-respect. They thought it very funny that he should give it to a public charity. The fun was probably in the idea that any of Weed's money should go to a public charity. We tell you that not a dollar of the recovery shall be used for any private purpose. Seeing, therefore, that you can only express your sense of the wrong done to the plaintiff by the amount of the verdict, the question arises, what are the reasons or principles by which that should be determined. It is not the pecuniary loss which the plaintiff may have sustained by which you are to judge. That may not be known to the plaintiff himself; it may be incapable of proof. It is compensation for the disquietude which the plaintiff has undergone, his mental suffering, the lessening of him in the public esteem, and the injurious effect it may have upon his social and political relations. The defence which has been set up is, as all the authorities agree, an aggravation of the original libel. The record of an attempted justification is the clearest evidence of malice. But if that little silent piece of paper contains such evidence, how much more does the oral slander of counsel contain it. Both the counsel have indulged in it, far beyond their duty or their privilege; but the opening speech of the junior counsel was so gross in its language, so monstrous in its perversions, so outrageous in its abuse, that, for the sake of the defendant, whom it insulted; for the sake of the court, which it contemned; for the sake of the community, which it offended, it ought to be visited by your displeasure. The profession of the law is one of the noblest that can employ the faculties of man. To be a defence to the weak, a speaker for the ignorant, an adviser to the doubtful, a bulwark against power, an interpreter of the laws, a helper to justice, is an office and a function, for having which any man may feel himself exalted. The profession is rich to overflowing in its histories and its traditions. The greatest men of all ages have illustrated its annals. Orators, philosophers, statesmen, have reaped its emoluments and borne its honors. The judiciary of every free country is recruited from its ranks. The Chief-Justice of the United States is second only to the President; the Lord Chancellor of England takes precedence of all the nobles—such is our profession. But if it is to be perverted as it has been perverted here, it must lose its character and its influence. If there be many whom a fee can induce to rise in a court of justice, and under cover of the privilege, vilify a party, as my client has been vilified outside of the evidence and the issue, then I can only say that the name of lawyer will soon be a by-word and a hissing, and will come to be accounted *hostis humani generis*—an enemy to the human race, fit only to be hooted from the world. Who is George Opdyke? A New York merchant, punctual to all his engagements, honorable in all his dealings, sensitive to that which is the life of this mercantile community—mercantile honor; whom no man reproached, or dared to reproach, till he was set upon by thieves. Ask those who have dealt with him. Ask those who have lived with him. In private life without a stain, in every relation exemplary, whether as son, husband, father, friend, citizen; in public life devoted to its duties. From the time when he took the office of Mayor, he gave it all his days and nights, saving only three hours a week to his private business. He defied, resisted, and, to a great extent, defeated during his Mayoralty, the robbers about the City Hall. That is the secret of their hostility to him. Mr. Purdy tells you that he saved millions to the City Treasury. He resisted the measure, passed by the Common Council, for giving, or rather wasting three millions for draft exemptions, and defeated it; he resisted the court-house jobs and the Fort Gansevoort job, as long as resistance was possible. Is such a man to be hunted down? Who is Thurlow Weed? I should not have dragged his character into this trial, if his counsel had not done it. Being here he must be treated as he deserves. I acquiesce, if I do not dissent. I am bound therefore to say that he is, in my opinion, and in that, I believe, of most of his countrymen, a leader of that band of profligate men who surround and disgrace Congress, the Legislature and the Common Council, seeking grants of franchises, lands, offices, and jobs; corrupting, bribing, soliciting, misleading; living upon the country; public plunderers. Shall such a man go unpunished? What is a libeler? He is a man who publishes of another a malicious falsehood, tending to injure and degrade him. To talk of such a man as entitled to any immunity by reason of the liberty of the press is to disparage your understanding. The liberty of the press, that liberty for which wise and good men struggled for ages, which we have so securely obtained as to have enshrined it in our Constitution, is the liberty to tell the truth. The liberty to lie was never given, and never intended to be given, and never can be given, till society is resolved into its elements. "Thou shalt not bear false witness" is one of the commandments; "Thou shalt not steal" is another. One may just as truly strive for the liberty to steal as the liberty to lie. If character is worth anything we must protect it. It is of priceless value. Next to the approval of God and your conscience, the greatest incentive to good actions is the approval of your fellow-men. Instead of holding one up to censure for having vindicated his character through the law, applaud him for his confidence in himself, his confidence in you, his confidence in the laws. And let your verdict be the answer to all the calumnies and all the sophistries which during these four weeks have been uttered in this hall.

JUDGE MASON'S CHARGE TO THE JURY.

Judge Mason, after a few preliminary remarks to the jury, paying them a deserved compliment for their patience and attention to the case, and defining the duty of the jury and of the court, spoke of the law applicable in the case. As the law now stands with us in this state, the defendant, when arraigned for a libel, may give the truth in justification; and if he sustains before the court and jury the truth of the libel, he stands wholly acquitted of the publication, without stopping to inquire into his motives, whether the truth was published with good motives and for justifiable ends or not. A different rule obtains where the prosecution is by indictment. The libel gives a civil action; it also gives an indictment. The latter is given upon the idea that libelous publications tend to a breach of the peace, and therefore concern the public interest, and that the libeler may be punished by indictment, in behalf of the people, to preserve the public peace. When the trial comes up on an indictment, then the defendant has to establish not only the truth of the libel, but he is to satisfy the jury, before whom it is tried, that he published that truth for good motives and justifiable ends. There may be cases where a man may publish the literal truth in a libel, and yet he should be punished just as severely as though he had justified a falsehood, for in some cases which can be put, the aggravations would be even greater. A man may publish through the public press some secret physical infirmity of his neighbor, unknown to the world, which will wound the feelings and sting to the quick the sensibilities of the man who is libeled, and yet the libels may all be true. In this, a civil action for damages, the law allows the defendant to give in evidence the truth of the libel, and if he establishes that truth, then he stands fully acquitted. Before proceeding to the case, allow me to state another particular, in reference to which there has been some controversy—in reference to which the laws of this state stand in direct collision with the courts in England at this day. If I were presiding in a court in England, I should be obliged to say to you: Gentlemen, the law makes you the judges, in this civil action, both of the law and the fact, so as to determine the question whether the article is libelous or not. They hold the rule there that the judge must charge the jury what constitutes a libel, and leave it to the jury to say whether this is a libel. Well, they have had some rich experience under this new rule in England, which shows the folly of the rule itself. A case came before a court there, and the judge elicited the law of libel correctly, and the jury retired and brought in their verdict. Then came a rule to show cause why a new trial should not be had, for the jury had found that not to be a libel which was a libel. The case was argued, and counsel conceded that the judge had charged the law of libel correctly; but the jury, who, under the law as administered in England, had a right to say whether the matter charged was a libel or not, had found that to be no libel which was a libel, and the rule was made absolute, and the verdict set aside. Not a year from that time, came another case from the Court of Exchequer, on a rule to show cause why a verdict should not be set aside, and there it was conceded that the judge had charged the law of libel correctly, but the jury had, forsooth, found that to be a libel which was in law no libel, the very converse of the first case. Well, the result of it all was, that the court, after the jury had rendered their verdict, pronounced it a libel, granted the rule absolute, and set aside the verdict, holding that the jury had held that to be a libel which was no libel. The consequences which have flowed from that in the courts of England within the last few years, show the absurdity of the rule. It is my duty to state to you now, gentlemen, what our rule is in this State. If I understand it, it is a sound rule, founded in practical wisdom, and plain, practical common sense; and here, gentlemen, it brings me to a part in this case where I should be very careful, and you should be very observant in looking to the precise duties which belong to me, and those which belong to you. It is my right, nay, it is my duty, to define to you wherein I may say to you this article is libelous, and wherein I may say to you there is a question left here for you to determine whether it is or not. Now the rule is this: where the charge, as published, leaves no ground for doubt; where there is nothing left to interpret, as if I should say, "Mr. Blatchford, in cool blood, rose in court, drew his pistol, and shot Mr. Weed—murdered him," and published that through the papers in the morning, and it should come out as false, and I should be sued for libel, would it not be mere nonsense for any judge who should sit to try that case for libel, when there was a plain imputation of murder—no doubt about it—would it not be mere nonsense for a judge to define what constitutes a libel, and leave the question for the jury, whether the charge is libelous or not? No; our rule is that the judge must say that the article is libelous as a matter of law, or that it is a question to be left for the interpretation of the jury. When the publication is susceptible of two constructions, then the judge must leave it to the jury to say which of the two constructions is intended by the article. In this connection, gentlemen, it is my duty to advise you with regard to another rule, and that is that when a publication is susceptible of two constructions, one of which would give an innocent meaning and the other would impute libel, or give them a criminal meaning, and where it is as well susceptible of the one construction as the other, then it is your duty to give it the more lenient construction; because courts and juries are not to presume malice in

the publication, unless it is necessarily and clearly inferred from the language employed, the same as that they are to impute innocency of conduct in all cases, unless they are obliged by the evidence to impute guilt. In further reference to the duties which pertain to the court, and those which pertain to you, I think I can illustrate more to your understanding the rule which I design to lay down by calling your attention to this libel. The first matter charged in this complaint for libel is the following: "This man has made more money by secret partnerships in army cloth, blankets, clothing, and gun contracts, than any fifty sharpers, Jew or Gentile, in the city of New York." Now, that is not so clear that I have a right to say to you that it is libelous. That is a case where it belongs to you to put a construction upon the language, and say whether or not you will apply the construction Judge Pierrepont and Mr. Evarts place upon it, or give it the construction claimed by the other side. They contend that Mr. Weed intended to charge that this man had made this money dishonestly, and as sharpers make their money. Now, there is good sense in leaving this to a jury, instead of to the court, for it is to be interpreted as these words are understood in common parlance among men—not by any technical rule of law. It will be for you, therefore, to take this article and say whether it is its intention to impute to Mr. Opdyke dishonest or sharp practices, and the one construction or the other which you put upon it determines whether it is or is not a libel. This brings me to the point in my charge where I should define to you what constitutes a libel. A libel is a malicious defamatory publication of another, calculating to hold him up to disgrace, to contempt, or even to ridicule. It is not necessary that a charge of crime or criminal offence should be made—which is the distinction between written and verbal slander. Any publication of a man that holds him up to ridicule or contempt—that has the effect to defame him—to lessen his character and fair fame—is a libel. Now, I ought to say that when an article is found by the jury to contain a libel, there are certain legal imputations which immediately follow. One is, that the law presumes it to be false; presumes that the defendant has made a libelous accusation falsely; it also assumes and imputes another thing. It infers damages to flow from it without any proof at all. The burden of proof, therefore, is not upon the plaintiff to show that it is false, but is upon the defendant to show the libel to be true. I will, in the next place, gentlemen, call your attention to the balance of this alleged libel. (The Judge here read the libel already published, in relation to the claim against the city.) The plaintiff's counsel claims that this allegation charges upon Mr. Opdyke the making up of an unfounded claim against the Corporation of New York for the loss of this gun-factory and its machinery; that it imputes to him the making up of this claim dishonestly, and the working it through by dishonest means, and getting it allowed by dishonest practices of his own. It, therefore, presents for your consideration the question in regard to the claim; in the first place, whether the claim itself is dishonestly made up, and next, whether there was in the making up and the carrying through of this claim for this gun-factory, a swindle, a fraud, a wrong practised upon the city. This is a question which belongs to you to decide. The defendant's claim is that they have fully justified this part of the libel, even up to the point that should satisfy you that Mr. Opdyke did, as Mr. Gibbs, the inventor of this carbine, said, commit a great swindle against the Corporation in making up this claim against the city. They base this upon the allegation that here was a wrong rule of damages, that this claim was made up upon a claim founded upon a rule of damages illegal and unsustained in law, and therefore they were justified in making this publication. As I understand this act giving damages to the owner of property destroyed by mob, it gives an action against the Corporation for all the damages sustained, and thus it is a mere act of indemnity furnishing them indemnity for the loss of their property, and nothing more. Now, when we come to the precise rule by which the question of damages shall be ascertained, we find the sides in this case traveling widely different roads. Mr. Opdyke, in making up the claim, travels one road, and Mr. Orison Blunt, as I understand him, representing the Board of Supervisors, when he came to investigate the claim, adopted another rule, and traveled another road to ascertain what the damages were. These rules of damages, many of them, are predicated not so much upon any enlightened morals as upon rigid and stern rules, I will give two illustrations: Suppose I convey a lot to Mr. Blatchford in this city for $5,000 and covenant to warrant and insure that title to him, giving him the title, promising to warrant and defend him in that title and in the possession of it, and he puts up a dwelling worth $30,000. Suppose ten years hence the title is proved false, and some one comes and ejects Mr. Blatchford from his house and lot. He turns round and sues me upon the covenant, and claims that I should pay him the $30,000 he has lost upon the house, and the $5,000 he paid me upon the lot. No, say the courts, Mr. Blatchford, you can only recover the $5,000, with interest. Men would say there was not much good sense in that, but it was established upon the idea that in the early settlement of the city a man might sell a piece of land for $200 and in course of time the building upon it might be worth fifty millions, and no man's estate could meet the burden of damage arising out of a proof of false title in such a case. Suppose Mr. Weed

contracts with me to sell me a horse for $500, and I immediately make a written contract to sell the horse to Mr. Blatchford for $1,000. Mr. Blatchford is a responsible man, and has his money ready in the bank to pay me, and there is no doubt but on taking the horse I can deliver it over to Mr. Blatchford, and receive the money. But to-morrow, Mr. Weed says, Judge Mason, I cannot let you have that horse. Well, I sue Mr. Weed for violating his contract, and I say I should have had of you a thousand dollars from Mr. Blatchford for the horse, so I will have the $500 that I should have made out. But the courts say, No, you cannot recover it; you can only recover what you can prove the horse to be actually worth by witnesses upon the stand. There are some men that would say that the horse was worth a thousand dollars in hand to me because I had a valid contract with Mr. Blatchford, but the law won't allow me to take that. Now I do not understand, gentlemen, that in this claim against the city Mr. Opdyke had a right to put these guns in at the contract price. If he has proved, as is claimed by Mr. Keene and Mr. Brooks, that they were actually worth that price, that puts a different view on the case. The claim was made up by taking these guns in the process of manufacture, in the state in which the different parts were in the factory, and deducting the cost of completing them from the contract price to be paid by the Government. Now, as I understand the evidence in this case, that claim could not be sustained. The price to be paid by the Government, of course, embraced the $3 50 royalty due to the inventor when the gun was finished. If an action were here on trial before me to recover of the Corporation this claim, I should be obliged to say to you that Mr. Opdyke had no valid claim against the Corporation for the royalty on those guns, nor had Mr. Brooks any claim upon Mr. Opdyke or Mr. Farlee for the royalty, because by the written contract between the parties, the royalty was not due until the time when the guns were completed. Mr. Brooks himself says this upon the stand here. I do not see, upon any claim, therefore, how the $21,000 for royalty could have been made as a legal claim against the corporation. It is competent here to offer evidence as to the real value, and I do not think that a true standard value would be merely what the different parts, in process of manufacture, sold separately, would bring in the market. Now, gentlemen, I have said enough in regard to this branch of the case. As I understand the evidence in the case, it appears that when this claim was presented in this form to the committee, Mr. Blunt did not adopt the theory at all, but resorted to another, and certainly one much more dangerous and one altogether wrong; and that was, to ascertain the whole outlay in this establishment, or what it had cost Mr. Opdyke and those concerned in getting up the factory, in machinery and tools, and going through the whole cost of constructing these guns; and when he arrived at the fact that the outlay exceeded in extent the claim, he says he was satisfied the claim was just, and allowed it. That was certainly more wrong than the other basis; but it only shows that laymen are not always safe judges of the rules of law, in determining such questions. Now, I ought to say to you, that although the defendant may have succeeded in showing you that Mr. Opdyke did, on this claim against the Corporation, get a larger sum than he was entitled to, and that a wrong rule of damages was adopted (as I think there was) in making up this claim; yet it does not follow that Mr. Opdyke was dishonest in that. This libel must be justified as broadly as it was made, and liberally in the sense in which it is charged; and if it charges Mr. Opdyke with fraudulently making up a claim against the Corporation—having a swindle in it—performing that which a swindler would do—then the claim must be justified as broadly; and before this branch of the libel is justified, you must come to the point of finding that this claim was made up dishonestly by Mr. Opdyke, and that he believed, when he adopted the rule suggested by Mr. Jones, and carried out by Mr. Keene, in making up the claim, it was wrong and would result in bringing a larger claim against the Corporation than it was liable to him for. That is the question for you to determine—whether you believe Mr. Opdyke, in presenting this claim upon this rule of damages, knew that he was doing a wrong, and presenting a fraudulent claim. You are to determine it in the light of all the evidence. You should bear in mind that Mr. Jones swore he thought it was an honest way of making up the claim; that Mr. Keene swears he regards it a just mode; that Mr. Opdyke swears the same thing. The other side rely upon the fact, as they contend, that it was not communicated to the committee fully, the basis upon which the claim was made. Upon that, also, you have the evidence. There is another part of the libel to which we now come, where it is my duty to decide, and not yours; and that is where Mr. Opdyke is charged with being an *ex-officio* member of the Auditing Committee; that he sat on the committee auditing this claim, concealing the fact that he was the principal party interested; and by that means carried this swindle through. I have no hesitation in saying that that which is the most serious part of all these charges, as I regard it, is libelous. I do not think there is any doubt about what it means, and I do not think there is anything left to interpretation in regard to it. Then it is for you to say whether it is justified by the evidence in the case. If there be no dispute on the evidence that it is not justified, then it is my duty to say to you, you must find the charge undefended. Now, the first part of

it, I suppose, is wholly untrue. The Mayor, by virtue of his office, is not a member of this committee. It is very clear, *de jure*, he was not a member. But if you find he was a member of the committee, *de facto*, then I think that branch of the libel may be justified. Mr. Purdy says that the Mayor and Comptroller were not members of the Committee, but were sent for frequently, so that they might understand the claims which were passed upon, and it would seem that on the claim of Mr. Wakemau both the Mayor and Comptroller voted. That is the only instance, so far as this case is concerned, in which they are shown to have acted. Did Mr. Opdyke act on the claim for this factory before the committee? I understand the evidence to be all one way—he did not. There is no doubt about that. All the witnesses agree that he did not aid in auditing that claim. Well, did he conceal from the Board of Supervisors the fact that he was interested in that claim? I think not; and I have looked carefully through the notes of testimony. [The court reviewed the testimony on this subject, and added]; I think, gentlemen, you will find that this part of the libel which charges Mr. Opdyke with being a member of the committee sitting upon this claim, auditing it, and concealing the fact that he was interested in the claim from the Board of Supervisors, is unsustained by the evidence in the case. I next come to the charge that the plaintiff attempted to wrong McNeil, and that "he came to grief, as dishonest men are quite likely to do when they undertake to cheat those with whom they are engaged in business." There is an accusation there. Whether it is libelous or not I leave for you to say; and whether it is justified or not, I leave for you to say, without any comment upon the evidence. There is a reference there to a designation which has not been much commented on. The writer charges that "Oily Gammon" soon came to grief. Sitting here as a Judge, I cannot say what is meant by that; but if Mr. Blatchford should get up here and accuse any brother of the bar of being "Oily Gammon," I think I should understand pretty well what was meant. I should think he referred to the middle member of the firm of Quirk, Gammon & Snap, whom Mr. Warren describes in "Ten Thousand a Year," as having a cold, gray eye, who drew business from the pollutions of the city, and whose clients were a class of miscreants—who was the "very devil at invention." If you, mingling among men, understand the expression "Oily Gammon" to convey such an imputation, you will say if Mr. Weed so applied it to the plaintiff, and whether he is to be punished for so doing. Next we come to the charge of the "sale of the office of Surveyor of the Port." You, gentlemen, will say in what sense these words are intended. If the language implies the sale of an office outright, it is undoubtedly slanderous; because it would hold any man in this community up to contempt, disgrace, and infamy, who should sell an office for $10.000. It is contended by the defendant's counsel that the language does not mean that, but means the selling of Mr. Opdyke's influence to procure the appointment for Mr. Andrews; and that you must put that construction on it, because Mr. Opdyke did not possess the power to give the office. You will say, if it was that, whether you would not consider it a disgrace to Mr. Opdyke to do just that thing; whether he would not be held up to infamy, disgrace, and contempt for doing it. If so, then the language is libelous; and the only remaining question is, was it justified? Mr. McNeil swears there was such a bargain made between Andrews and Opdyke, and that he was the broker who made it. You have his testimony and that of Mr. Williamson; and the testimony of Mr. Andrews, who swears unqualifiedly that no such bargain ever took place or was dreamed of by him. There is a collision between the witnesses on this point. It is a question for you, and if you find the charge libelous, and that it is undefended, that there was not agreement to sell this office, you will, of course, give a verdict against Mr. Weed. We now come to the next charge in the libel, and that is the conduct of Mr. Opdyke in connection with General Fremont and the Mariposa estate. You have heard this matter referred to several times by counsel, and it belongs to you, and not to me, to say whether that is a libel. You will say whether it imputes to Mr. Opdyke and his associates in that transaction practices fraudulent and overreaching; or whether, taking it all in all, just as it stands, reading it as common-sense men, you think it holds up Mr. Opdyke to infamy, disgrace, contempt, and ridicule. It is claimed on the part of the plaintiff that you should infer such was the intention, to charge sharp practices and extortion, because the article closes up by saying that there were other sharp practices and extortions which would make Jews blush, as the writer was informed by the confidential friends of Gen. Fremont. You will say how this is; and you will say, in the next place, whether it is justified by anything given in evidence. That branch of the case all rests upon the testimony of Gen. Fremont. This carries us through the list of libels in the article of the 18th June. There is a brief one on the 25th. "Mr. Gibbs, the carbine patentee, says that in the claim submitted to the Supervisors, on which $196,000 was paid, there is a large swindle." In regard to that, counsel for the defense read this alleged libel to Mr. Gibbs, and inquired, "Did you say that?" Answer—"Yes, I did, I said it to several persons." There the investigation stopped. I am requested to charge you that proving that Mr. Gibbs said so is not a justification of the libel. I understand the rule to be, as stated in the head-note in a case in 1st Wendell: "In an action for libel, the publication

in a newspaper of a rumor is not justified by the fact that such rumor existed. The fact may be given in evidence in mitigation, but not in justification." Then there is a charge which I overlooked, as to "shoddy" blankets, that were rejected in New York, and subsequently worked in at Philadelphia. It belongs to you to say whether that language at this day and hour, taking common parlance in its interpretation, means to charge upon Mr. Opdyke any dishonest practices in his dealings with the Government for blankets. Mr. Weed uses the word "shoddy." You may know what that means. It is also for you to say what is meant by the expression "working in;" whether it means to impute any but honorable means in getting those passed. If it does, you will say by your verdict whether there is any evidence in the case that justifies that charge. In short, gentlemen, I leave all these libels, their interpretation, construction, and the decision of the question whether they do impute a libelous charge against Mr. Opdyke, or not—I leave the whole to you to determine; with the single exception of the one which charges him with being a member of the committee to audit this claim of Mr. Farlee, with sitting upon the claim, and concealing the fact that he was largely interested, and by that means getting the claim through. That, I charge you, is, in law, a libel. I do not myself see anything in the testimony to justify that branch of the case. You will take it, and say what damages ought to be awarded, as you will in regard to all the alleged libels. The rule is that the defendant must justify as broadly as he charges. The law allows him to justify any one charge, and if he justifies that he stands so far acquitted. If he fails in any one, he fails in that, although he may prevail in regard to all the others. On the question of damages, the Court charged that, the libel being broad, the law imputes malice, and implies damages to result; and the law says, in addition, that the plaintiff should be fully compensated for his actual damages—fully solaced for his wounded feelings. The law also permits the infliction of punitive damages by way of punishing the defendant, in order to make an example of him, and deter evil doers; to stay the hand of the libeler. In regard to both these propositions the law has no standard, but refers every case to twelve men to say what is right. The plea of justification of the libel or of justification of an oral slander, wherever it utterly fails, and is not sustained by the proof, may be considered by the jury in aggravation of the damages; but if, when the whole case is developed before the jury, they can discover any mitigating circumstances for the publication of the libel, then it may be a mitigation instead of an aggravation.

His Honor committed the case to the jury, impressing upon them its importance and the necessity of doing equal and exact justice between the parties, so that they might be able to say they had done fully their duty in deciding the case, as he took pleasure in saying they had faithfully done their duty in listening to it. He directed them, if they agreed, to seal their verdict, and bring it into court in the morning. If they failed to agree before 7 o'clock, a supper would be provided for them, and they would see the propriety, after so protracted a trial, of spending one night in an earnest effort to come to a conclusion.

TWENTIETH DAY.

WEDNESDAY, JANUARY 11TH, 1865.

DISAGREEMENT OF THE JURY.

At the opening of the court this morning, there was a dense crowd, to learn to what decision the jury had come; and on hearing that they had been locked up all night, without agreeing, the expression was general: "I thought so; I was sure they would not agree."

When brought into court, the jury looked as if they had not suffered much from the night's confinement.

THE CLERK—Gentlemen of the jury, have you agreed upon your verdict?

FOREMAN—We have not.

JUDGE MASON—Are you not able to agree?

FOREMAN—No, sir.

JUDGE MASON—Is there no probability of it?

FOREMAN—Not the slightest, I think, sir.

JUDGE MASON—There is one branch of the case, under my charge, on which I confidently expected the jury might be able to agree, however they might disagree on the rest, for there was but little responsibility left to the jury. As to the charge which was imputed to Mr. Opdyke of sitting on the Auditing Committee, I charged you it was libelous, and that it was undefended. And yet there is a point where your province may allow you not to disagree, even as to this; that is, barely on the question of damages. All the other charges I have nothing to say about. You might disagree in regard to them. I should infer, from what your foreman has said, that you are not able to agree.

FOREMAN—Such is my understanding, after a conference with my associates on the jury.

JUDGE MASON—Gentlemen, you are discharged.

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